
STUDY MATERIAL

PROFESSIONAL PROGRAMME

**ADVANCED COMPANY
LAW AND PRACTICE**

(updated upto June 2018)

MODULE 1

PAPER 1



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

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ADVANCED COMPANY LAW AND PRACTICE

This study material has been published to aid the students in preparing for the Advance Company Law and Practice paper of the CS Professional Programme. Company Law has undergone radical changes over the past few years, so is the procedural requirements relating to compliance under various provisions of the Company Law. As the Company Secretary plays an important role in ensuring compliance of various provisions of the company law thereby avoiding penal consequences, this study material has been prepared with a view to provide an expert knowledge and understanding of the various procedural requirements of Company Law. With this objective in mind, a number of specimen notices, minutes, resolutions and forms have been included at relevant places. However, the students are advised to study the various procedures relevant for the purpose of this paper, in the light of the provisions of the Company Law and Rules made thereunder.

Company Secretaryship being a professional course, the examination standards are set very high, with emphasis on knowledge of concepts, applications, procedures and case laws, for which sole reliance on the contents of the study material may not be enough. Besides, Company Secretaries Regulations, 1982 requires the students to be conversant with the amendments to the laws made upto six months preceding the date of examination. This study material may therefore be regarded as basic material and must be read alongwith the Bare Act, Rules, Regulations, Case Law, as well as suggested readings.

The study material is based on those sections of the Companies Act, 2013 and the rule made there under which have been notified by the Government of India (including Amendments/clarifications/circulars issued there under upto June, 2018). In respect of sections of The Companies Act, 2013 which have not been notified, applicable sections of Companies Act, 1956 have been dealt with in the study.

The amendments made upto June 2018 , have been incorporated in this study material. However, it may happen that some developments might have taken place during the printing of the study material and its supply to the students. The students are therefore advised to refer to the e-bulletin 'Student Company Secretary' and ICSI Journal Chartered Secretary and other publications for updation of study material. In the event of any doubt, students may contact the Directorate of Academics at **academics@icsi.edu**.

Should there be any discrepancy, error or omission noted in the study material, the Institute shall be obliged if the same are brought to its notice for issue of corrigendum in the e-bulletin' and Student Company Secretary'.

Although due care has been taken in publishing this study material, yet the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omission and/or discrepancies or any action taken in that behalf.

SYLLABUS

MODULE 1-PAPER 1: ADVANCED COMPANY LAW AND PRACTICE (100 Marks)

Level of Knowledge: Expert Knowledge

Objective: *To acquire expert knowledge of the practical and procedural aspects of the Companies Act.*

Detailed Contents:

1. Company Formation and Conversion

- Choice of Form of Business Entity; Conversion/ Re-conversion of One Form of Business Entity into Another
- Incorporation of Private Companies, Public Companies, Companies Limited by Guarantee and Unlimited Companies and their Conversions/ Re-conversion/Re-registration
- Formation of Nidhi Companies, Producer Companies and Mutual Benefit Funds
- Commencement of Business and New Business; Pre Incorporation Agreements and Contracts
- Formation of Non Profit Companies
- Procedure Relating to Foreign Companies Carrying on Business in India

2. Procedure for Alteration of Memorandum and Articles

- Alteration of Various Clauses of Memorandum: Name Clause, Situation of Registered Office Clause, Objects Clause, Capital Clause and Liability Clause
- Effects of Alteration of Articles

3. Procedure for Issue of Securities

Part A: Shares

- Public Issue, Rights Issue and Bonus Shares, Issue of Shares at Par/Premium/Discount; Issue of Shares on Preferential /Private Placement Basis
- Allotment, Calls on Shares and Issue of Certificates
- Issue of Sweat Equity Shares, Employees Stock Option Scheme (ESOPs), Employees Stock Purchase Scheme (ESPS), Shares with Differential Voting Rights
- Issue and Redemption of Preference Shares
- Alteration of Share Capital - Forfeiture of Shares and Reissue of Forfeited Shares; Increase, Consolidation, Conversion and Re-conversion into Stock, Subdivision and Cancellation and Surrender of Shares
- Buy Back of Shares
- Reduction of Share Capital

Part B: Debt Instruments

- Issue of Debentures and Bonds, Creation of Security and Debenture Redemption Reserve, Drafting of Debenture Trust Deed, Redemption of Debentures, Conversion of Debentures into Shares

- Deposits

4. Procedure relating to Membership, Transfer and Transmission

- Induction of Members, Nomination of Shares, Variation of Shareholders' Rights, Cessation of Membership including Dispute Resolution
- Transfer/Transmission/Transposition
- Admission of Securities in Electronic Mode
- Dematerialization/ Rematerialisation of Securities
- Compliances relating to Insider Trading and Takeovers

5. Directors and Managerial Personnel

- Obtaining DIN
- **Directors and Managerial Personnel**- Appointment, Reappointment, Resignation, Removal and Varying Terms of Appointment/Re-appointment
- Payment of Remuneration to Directors and Managerial Personnel and Disclosures thereof; Compensation for Loss of Office
- Waiver of Recovery of Remuneration
- Making Loans to Directors, Disclosure of Interest by a Director, Holding of Office or Place of Profit by a Director/Relative
- **Company Secretary** - Appointment, Resignation and Removal
- **Company Secretary in Practice** - Appointment, Resignation and Removal

6. Meetings

- **Collective Decision Making Forums** - Authority, Accountability, Delegation and Responsibility
- **Board Meetings** - Convening and Management of Meetings of Board and Committees; Preparation of Notices and Agenda Papers
- **General Meetings** - Convening and Management of Statutory Meeting, Annual and Extra-Ordinary General Meetings, Class Meetings; Creditors' Meetings; Preparation of Notices and Agenda Papers; Procedure for Passing of Resolutions by Postal Ballot; Voting through Electronic Means; Conducting a Poll and Adjournment of a Meeting
- **Post-Meeting Formalities** - Preparation of Minutes and Dissemination of Information and Decisions

7. Auditors

- **Auditors** - Procedure for Appointment/Re-appointment, Resignation and Removal of Statutory Auditors and Branch Auditors; Appointment of Cost Auditors
- Special Auditors; CAG audit

8. Distribution of Profit

- Ascertainment of Distributable Profits and Declaration of Dividend; Payment of Dividend
- Claiming of Unclaimed/Unpaid Dividend; Transfer of Unpaid/Unclaimed Dividend to Investor Education and Protection Fund

9. Procedure relating to Charges

- Creation and Registration, Modification, Satisfaction of Charges
- Inspection of charges

10. Procedure relating to Inter-Corporate Loans, Investments, Guarantees and Security

- Making Inter-Corporate Loans, Investments, Giving of Guarantee and Security

11. Preparation & Presentation of Reports

- Preparation of Financial Statements, Auditors' Report, Directors' Report and Report on Corporate Governance

12. E- Filing

- Filing and Filing of Returns and Documents
 - (a) Annual Filing, i.e., Annual Accounts; XBRL Filing, Compliance Certificate, Annual Return
 - (b) Event Based Filing

13. Striking off Names of Companies

- Law and Procedure

14. Recent Trends and Developments in Company Law

15. Trusts and Non Profit Organisation

LIST OF RECOMMENDED BOOKS

MODULE 1

PAPER 1 : ADVANCED COMPANY LAW AND PRACTICE

The students may refer to the given books and websites for further knowledge and study of the subject :

Readings:

1. A Ramaiya : Guide to the Companies Act, Wadhwa & Company, Nagpur
2. D K Jain : E-filing of Forms & Returns, Bharat Law House
3. Taxmann : Company Law and Practice (A comprehensive text book on Companies Act, 2013)
4. D K Jain : Company Law Procedures, Bharat Law House
5. Taxmann : Companies Act, 2013 with Rules and Forms and SEBI Rules/Regulations/Guidelines (Set of 3 volumes)

Journals:

1. Chartered Secretary : ICSI Publication
2. Student Company Secretary : ICSI Publication
3. Corporate Law Adviser : Corporate Law Advisers, Post Bag No. 3, Vasant Vihar, New Delhi.
4. Company Law Journal : L.M. Sharma, Post Box No. 2693, New Delhi - 110005

Website : www.mca.gov.in

Note:

The latest edition of all the books referred to above should be read.

ARRANGEMENT OF STUDY LESSONS

Study Lesson No	Topic.
1.	Company Formation and Conversion
2.	Procedure for Alterations of the Memorandum and Articles
3.	Issue and Allotment of Securities
4.	Alteration of Share Capital
5.	Issue and Redemption of Debentures and Bonds
6.	Acceptance of Deposits by companies
7.	Membership and Transfer/Transmission of Shares
8.	Key Managerial Personnel
9.	Company Secretary
10.	Meetings
11.	Auditors
12.	Preparation & Presentation of Reports
13.	Distribution of Profits
14.	Charges
15.	Inter-Corporate Loans, Investments, Guarantees and Security
16.	E-Filing
17.	Striking off Names of Companies
18.	Recent Trends and Developments in Company Law
19.	Trusts and Non-Profit Organisation

TEST PAPERS

ADVANCED COMPANY LAW AND PRACTICE

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Lesson 1

Company Formation and Conversion

LESSON OUTLINE

- Choice of form of Business Entity
- Incorporation of Companies
- Procedure for Incorporation of Companies
- Conversion of Companies
- Procedure for Conversion of Companies
- Procedure for ratification of pre-incorporation agreements and contracts
- Annexures – Specimen Resolutions
- LESSON ROUND UP
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

Starting a company requires a lot of planning and activities and more than that there are a number of formalities which need to be complied with. Detailed procedures and paper works are involved in order to start or to register a company in India. Registrar of Companies appointed by the Ministry of Corporate Affairs, is vested with the primary duty of registering companies.

Ministry of Corporate Affairs (MCA) has started the process of filing or uploading of forms completely online together with the attachment of required documents to the Registrar of Companies for initiating the Incorporation Process as a part of its 'MCA21 e-Governance Project.'

After completion of this lesson, students will be well-acquainted with practical and procedural aspects of company formation and conversion which include pre-registration requirements, name approval, acquiring digital signatures, preparation and submission of various e- forms and documents, stamping of memorandum and articles of association, payment of stamp duty, payment of registration fees, obtaining certificate of incorporation, compliance requirements relating to conversion of companies, conversion of other entities into companies etc. Students will also be able to understand the procedural aspects relating to ratification of pre-incorporation contracts.

CHOICE OF FORM OF BUSINESS ENTITY

Selection of the form of business entity is one of the most important decisions before starting a business. This decision is required to be revisited periodically as the business develops. A business entity may exercise the options for conversion and re-conversion, as and when it seems appropriate. The choice amongst the various forms of business entities depends upon many aspects such as objects of the proposed business, likely number of members, amount to be invested, scale of operations, state control, legal requirements, tax implications, advantages of one form of business over another, etc.

Nature, Form and Types of Business Enterprises

Business enterprises can be broadly divided into two broad categories, namely, one which is non-corporate in form and the other which has a corporate character. Enterprises which fall in the former category are sole proprietorship, partnership and Hindu Undivided Family. Business organisations which comprise the latter category, are companies and co-operative undertakings. The basic difference between the corporate and the non-corporate form of organisation is that while a non-corporate form of business may be started without registration, corporate bodies cannot be set up without registration under the laws which govern their functioning.

Non-Corporate Form of Business Enterprises

(1) Sole proprietorship: In this form of business organisation, an individual normally uses his own capital, skill and intelligence to carry out some business activity. He is entitled to receive all the profits and gains of his business and also assumes all the risk of ownership. The sole proprietor exercises full control over the affairs of his business. As there is no legal obligation to supply any information regarding his business to anyone, he can maintain maximum secrecy in conducting his business affairs. This type of organisation is particularly suitable for businesses which are small in size and where risk and capital involved are not very large.

(2) Joint Hindu Family/Hindu Undivided Family: In this form of business ownership, the business is generally managed by the father or some other senior member of the family called the Karta or the manager. 'Karta' is basically the senior most male member of the family. The joint Hindu family firm comes into existence by the operation of Hindu Law and not by any contract.

(3) Partnership: In this form of organisation, few like-minded persons pool up their resources to form a partnership firm. Section 4 of the Partnership Act, 1932, defines partnership as "The relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all". This definition chiefly brings out the following features of partnership:

- (i) Contractual Relationship:-** Since partnership arises out of agreement between persons, only those persons who are competent to contract can be partners.
- (ii) Existence of business:-** There can be no partnership without business. The persons who have agreed to become partners must carry out some business activity.
- (iii) Sharing of profits:-** The agreement to carry on business must be entered into, with the object of making a profit and sharing it among all the partners.
- (iv) Mutual agency:-** The business must be carried on by all the partners or by any one or more of them acting for all the partners. Thus each partner is both an agent and a principal for all other partners.

Partnership is an ideal form of organisation for medium scale business operations which require greater amount of capital and risks than sole proprietorship or Hindu Undivided Family.

Corporate Form of Business Enterprises

(1) The Co-operative Organisation: Co-operative organisation is a voluntary association with unrestricted membership and collectively owned funds, organised on democratic principle of equality by persons of moderate means and incomes, who join together to supply their needs and wants through mutual action, in which the motive of production and distribution is service rather than profit. Besides being a form of ownership co-operative organisations are a means of protecting the interests of the relatively weaker sections of society against exploitation by big businesses operating for the maximisation of profits. The basic feature which differentiates the co-operative organisation from other form of business enterprises is that its primary motive is service to the members rather than making profits. A co-operative society is required to be registered under the Co-operative Societies Act, 1912. The co-operative societies receive a number of special concessions from the law and the Government, in order to encourage healthy development of Co-operatives.

(2) Company: This type of organisation is characterised by the fact that ownership and management are separate. The capital of the company is provided by a group of people called shareholders who entrust the management of the company in the hands of persons known as the Board of directors. A company is an artificial legal person created by process of law which makes it an entity separate and distinct from its members who constitute it. As a natural consequence of incorporation and transferability of shares, the company has perpetual succession. Thus, it can be said that this form of organisation is suitable when the capital requirements of a business are large, the liability of members is expected to be limited and the risks need to be spread among a larger number of persons.

Limited Liability Partnership (LLP)

LLP is an alternative business vehicle that gives the benefits of limited liability company and flexibility of a partnership firm. Since, LLP contains elements of both 'a corporate structure' as well as 'partnership firm structure'; it is many a times termed as a hybrid of a company and a partnership. LLP is a separate legal entity which can continue its existence irrespective of changes in its partners. LLP is an incorporated partnership formed and registered under the Limited Liability Partnership Act, 2008.

Owing to flexibility in its structure and operation, LLP is useful for small and medium enterprises, in general, and for the enterprises in services sector, in particular. LLP is also very suitable for professionals like company secretaries, chartered accountants, cost accountants, advocates etc. as it helps them to form multi disciplinary limited liability partnership firms.

Forming a choice

Though there are some similarities between a limited company and other forms of associations, there are a great number of dissimilarities as well. In both the cases individuals are the subjects, and pursuit of business activity is generally the object. Distinction between a limited company and a partnership firm, limited liability partnership, a Hindu Joint family business and a registered society has been discussed in detail in the study of Company Law of Module I of Executive Programme. Taking into account the requirement in each case and all the aspects of the various forms of business entities, the decision on the right type of business entity should be taken.

INCORPORATION OF COMPANIES

A company is an association of both natural and artificial persons incorporated under the existing law of a country. In terms of the Companies Act, 2013 a "company means a company incorporated under the Companies Act, 2013 (the Act) or under any of the previous company law" [Section 2(20)].

In common law, a company is a "legal person" or "legal entity" separate from, and capable of surviving beyond the lives of its members.

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A company may be formed for any lawful purpose by –

- (a) seven or more persons, where the company to be formed is to be a public company;
- (b) two or more persons, where the company to be formed is to be a private company; or
- (c) one person, where the company to be formed is to be One Person Company that is to say, a private company,

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration. [Section 3(1)]

Thus, Section 3(1) stipulates the existence of the following ingredients for the incorporation of a company:

- (i) Lawful purpose for which they should associate themselves;
- (ii) Promoters of the company – at least seven in the case of a public company, at least two in the case of a private company and one in case of one person company;
- (iii) Promoters must subscribe their names to the memorandum of association of the company;
- (iv) Promoters must comply with the requirements of the Companies Act, 2013 in respect of registration of the company.

As per Section 3(2), a company formed may be either –

- (a) a company limited by shares; or
- (b) a company limited by guarantee; or
- (c) an unlimited company

However, Specified IFSC Public Company and Specified IFSC Private Company shall be formed only as a company limited by shares (MCA Notification Dated 4th January, 2017).

Registrar of Companies (ROC) appointed under Section 396(2) of the Companies Act, 2013 by the Ministry of Corporate Affairs (MCA), is vested with the primary duty of registering companies and of ensuring that such companies comply with the statutory requirements of the Act. A company shall be registered with the ROC of the state under whose jurisdiction the proposed company's registered office will be situated.

As per Section 3A, Members severally liable in certain cases-

If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore.

Promoters to take steps for formation of the Company

Promoters are the persons, who conceive the idea or visualise a project and then take steps to transform the idea into a reality. They convey their idea to friends, relatives or business associates, make arrangements for collecting equity and loan capital for the company, prepare a team of persons who would act as its directors and take all other steps for compliance with the requirements of the Companies Act, 2013 in respect of registration of the company.

Promotion is a term of wide import denoting the preliminary steps taken for the purpose of registration and floatation of the company. The persons who assume the task of promotion are called promoters. A promoter may be an individual, association, partner or company.

According to Section 2(69) of the Companies Act, 2013 “promoter” means a person –

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

PROCEDURE FOR INCORPORATION OF PUBLIC LIMITED COMPANY HAVING SHARE CAPITAL

The following procedural steps are required to be taken by the promoters for the incorporation of a public limited company:

(1) Director Identification Number (DIN)

It is important to note that every person who is to be appointed as a director must have “Director’s Identification Number (DIN)” [Section 152(3)] or any number as may be prescribed under Section 153. If the proposed director does not already have a DIN, he/she must obtain the same before incorporation of the company. This can be obtained by making an application on the MCA portal in Form DIR - 3. DIN may also be obtained through Form INC-32 (SPICe) i.e. Single Application for Incorporation of Company.

In case the subscriber is already holding a valid DIN, and the particulars provided have been updated as on date of application and the declaration to this effect is given in the application, the proof of identity and residence need not be attached.

(2) Digital Signature Certificate (DSC)

Section 18 of the Information Technology Act, 2000 provides for use of Digital Signatures on the documents submitted in electronic form in order to ensure the security and authenticity of the documents filed electronically. This is the only secure and authentic way that a document can be submitted electronically. As such, all filings done by the companies under MCA21 e-Governance programme are required to be filed with the use of Digital Signatures by the person authorised to sign the documents.

Acquire DSC - A licensed Certifying Authority (CA) issues the digital signature. Certifying Authority (CA) means a person who has been granted a license to issue a digital signature certificate under Section 24 of the Indian Information Technology Act, 2000.

Register DSC - Role check for Indian companies is to be implemented in the MCA application. Role check can be performed only after the signatories have registered their Digital signature certificates (DSC) with MCA.

(3) Proposing the name of the Company and ascertaining its availability from the ROC

(a) Obtain a Digital Signature Certificate (DSC)

Process : In order to upload various forms Digital Signatures Certificate ('DSC') is required to be affixed on forms for uploading at MCA Website. DSC can be obtained directly from authorized agents of Certifying Authority like emudra, sify, etc.

Documents to be attached :

- Proof of Identity
- Proof of Residence
- Self-attested copy of PAN Card (Valid active PAN with Income Tax Department)

(b) Obtain Director Identification Number (DIN) Relevant Forms : Form DIR-3 (Before 26th January, 2018)

Form SPICe (w.e.f. 26 January, 2018)

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Process : Every person who wants to be appointed a Director on the Board of a Company is required to possess DIN. The same could be obtained by downloading Form DIN-3 from the MCA website. It was a mandatory requirement till January 25, 2018 to possess a DIN in order to File the Form SPICe for incorporating a Company.

However, w.e.f January 26, 2018, it is no more required to possess DIN prior to filing of form SPICe. DINs of proposed First three Directors in respect of new companies can be applied through SPICe form and Form DIR-3 is now applicable for the allotment of DIN to proposed directors of existing companies, which shall be filed by their existing companies.

Documents to be attached:

- Proof of Identity of Applicant (PAN for Indian Nationals, Passport for Foreign Nationals)
- Proof of Residence

STEP-I: Apply for Name Approval:

(A) Login on MCA Website

Applicant have to login into their account on MCA Website. (Pro-existing users can use earlier account or new users have to create a new account.)

User Login

Your session has expired, please login again to continue accessing the services.

 External Agency/Bank/Nodal Officials/Business Users

[Forgot Password ?](#)

Enter Characters shown below :

r e c a s t

Why should you register with MCA?

Register today and avail more services

- Upload E-Forms
- Make Payments
- Annual E-Filing

Browser / System Requirements

- Computer with Windows 2000 or later installed
- JRE (Java Runtime Environment) -Java version 8 is suggested
- Internet connection to access the MCA website
- Internet Explorer 10 or above / Chrome 49 or above /Firefox 45 or above
- You could observe issues with Adobe Reader DC version released recently. So we advise you to use

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After Login user have to click on the icon “RUN” in MCA Service. An online form shall be open. Applicants have to fill the information online. (This form can't be download)

STEP- II: Preparation of Documents for Incorporation of Company:

After approval of name or for Incorporation of Company applicant have to prepare the following below mentioned Documents;

- (I) INC-9 Affidavit / declaration by first subscriber(s) and director(s) (on duly authorized Stamp Papers).
- (II) DIR-2 declaration from first Directors along with Copy of Proof of Identity and residential address.
- (III) NOC from the owner of the property.
- (IV) Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts);
- (V) Copy of the utility bills (not older than two months)
- (VI) In case of subscribers/ Director does not have a DIN, it is mandatory to attach: Proof of identity and residential address of the subscribers
- (VII) All the Subscribers should have Digital Signature.

STEP – III: Fill the Information in Form:

Once all the above mentioned documents/ information are available. Applicant has to fill the information in the e-form “Spice” INC-32.

Features of SPICe (inc-32) Form:

- (a) Maximum details of subscribers are SEVEN (7). In case of more subscribers, physically signed MOA & AOA shall be attaching in the Form.
- (b) Maximum details of directors are TWENTY (20).
- (c) Maximum THREE (3) directors are allowed for filing application of allotment of DIN while incorporating a Company
- (d) Person can apply the Name also in this form.
- (e) By affixation of DSC of the subscriber on the INC-33 (e-moa) date of signing will be appear automatically by the form.
- (f) Applying for PAN / TAN will be compulsory for all fresh incorporation applications filed in the new version of the SPICe form.

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(g) In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees ten lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICe) shall not be applicable

(4) Drafting and Printing of Memorandum and Articles of Association

After ascertaining name availability from the Registrar of Companies steps should be taken to get the memorandum and articles of association for the proposed company drafted and printed. The memorandum of a company has to be in Tables – A, B, C, D and E in Schedule-I to the Companies Act, 2013.

The model articles of different kinds of companies shall be in Tables-F, G, H, I and J in Schedule-I of the Companies Act, 2013 as may be applicable to the company. A company may adopt all or any of the regulations contained in the model articles applicable to such company.

The memorandum and articles shall be in conformity with the provisions of Sections 4 and 5 of the Companies Act, 2013

If the promoters plan to get the securities of the proposed company listed with one or more designated stock exchanges, it is advisable to send the draft of the memorandum and articles of association to those stock exchanges for their scrutiny and suggestion to the effect whether they would like to have certain articles incorporated therein in compliance with the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred as Listing Regulations).

If applying through Form INC-32 (SPICe), it is mandatory to attach e-MOA in Form INC-33 and e-MOA in Form INC-34.

(5) Stamping and Signing of Memorandum and Articles

The memorandum and articles should be printed and signed by subscribers. Thereafter, the memorandum and the articles should be stamped by the appropriate State Authority (Collector of Stamps) under the Indian Stamp Act, 1899. However, presently there is a facility for online payment of stamp duty along with filing fees.

It is pertinent to note the Stamping is a subject matter of “State Revenue” and not a matter of the Central Government. Hence the Stamp Duty payable on the Memorandum and/or the Articles of Association shall be determined according to the place of incorporation of the company.

Memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and

occupation, if any. The witness shall state that “I witness to subscriber/subscriber(s) who has/have subscribed and signed in my presence (date and place to be given). Further I have verified his/their ID for their identification and satisfied myself of his/her/their identification particulars as filled in.”

Where the subscriber is illiterate, he shall affix thumb impression. The type written or printed particulars of the subscribers and witnesses shall be allowed as if it is written by the subscriber and witness respectively so long as the subscriber and the witness appends his or her signature or thumb impression.

(6) Dating of Memorandum and Articles of Association

The memorandum and articles are then dated, but the date must be the date of stamping or later than the date of their stamping and not, in any event, a date prior to the date of their stamping.

(7) Registration or Approval from Sectoral Regulation

Proviso to Rule 12 of the Companies (Incorporation) Rules, 2014 provides that in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board, registration or approval, as the case may be, from such regulator shall be obtained by the company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company.

(8) Filing of Documents and Forms for Registration

According to Section 7 of the Companies Act, 2013, all documents related to incorporation shall be filed before the Registrar, in whose jurisdiction registered office of a company is proposed to be situated. A Registrar may have jurisdiction over several states or only a part of a state. Following documents are to be submitted with the application for registration of company :

- (a) The Memorandum and Articles of the company duly signed by all subscribers; (b) A declaration by –
- a. an advocate or Practicing professional (CA, CS, CA) who is engaged in incorporation, and
 - b. a person named in director as Director, Manager or Secretary,

That all requirements related to incorporation has been complied with;

- (c) an affidavit from each subscriber and from each person named as first director in the articles that;
- a. he is not convicted if any offence in connection with promotion, formation or management of any company,

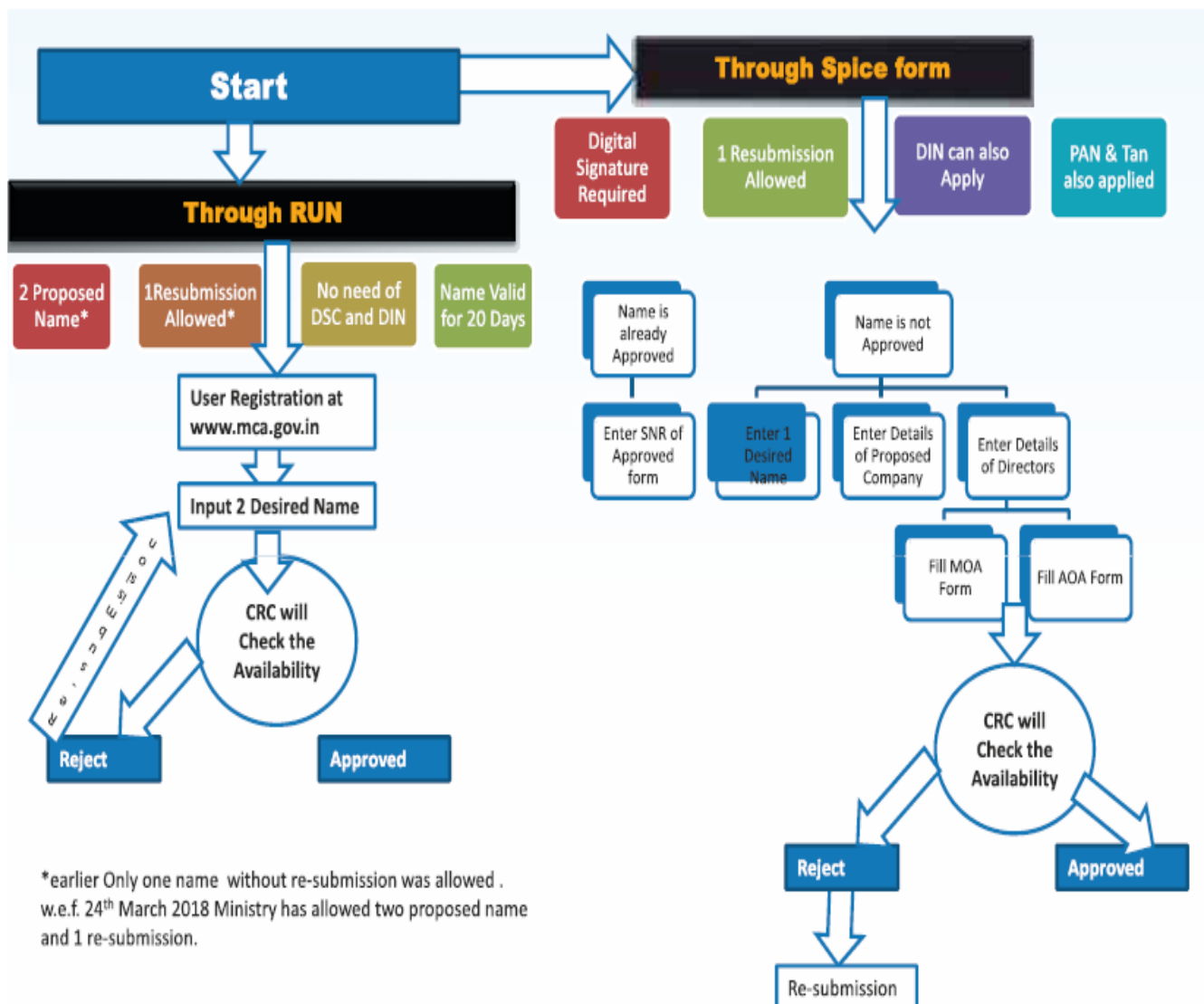
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- b. he is not been found guilty of any fraud or misfeasance or of any breach of duty to any company during preceding five years, and
 - c. all the documents filed with the Registrar contain correct, complete and true information to the best of his knowledge and belief
 - (d) the address for correspondence till its registered office is established; (e) the particulars of every subscribers along with proof of identity;
 - (f) the Particulars of first directors along with proof of identity;
 - (g) the particulars of interests of first directors in other firms or bodies corporate along with their consent to act as directors; and
 - (h) declaration that in case pursuing any of the objects of company requires registration or approval from sectoral regulators, registration or approval from such regulator shall be obtained before pursuing such objects.
- 8) A company may also furnish verification of its registered office by filing FORM No. INC-32 (SPICe) in which case the company shall attach any of the documents referred below:
- i. the registered document of the title of the premises of the registered office in the name of the company; or
 - ii. the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
 - iii. the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
 - iv. the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.
- 9) **FORM No. INC-22** shall not be required to be filed in case the proposed company maintains its registered office at the given correspondence address.
- 10) Where the Registrar, on examining FORM No. INC-32 (SPICe), 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.
- 11) After the resubmission 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 to remove such defects or deficiencies. However, the total period for resubmission of documents shall not exceed thirty days

12) The Certificate of Incorporation of company shall be issued by the Registrar in Form No. INC-11.

Note: Incorporation of a Company falling under Section 8 of the Act, FORM No. INC-32 (SPICe) shall be filed along with FORM No. INC-13 (Memorandum of Association) and FORM No. INC-31 (Articles of Association) as attachments.

Process of Incorporation of Companies



PROCEDURE FOR INCORPORATION OF PRIVATE LIMITED COMPANY HAVING SHARE CAPITAL

The procedure for the incorporation of a private limited company is similar to that of a public limited company (as discussed above) with the following exceptions:

The term Private Company is defined under section 2(68).

- (i) The requirement to have a minimum paid-up capital has been done away with.
- (ii) There must be at least two subscribers in place of seven, however in case of one person company there will be only one subscriber. The maximum number of members is two hundred
- (iii) Prohibit any invitation to the public to subscribe for any securities of the company in its Article of Association of the company.
- (iv) There must be at least two directors in place of three.
- (v) There is a restriction for the right to transfer its shares.

PROCEDURE FOR INCORPORATION OF COMPANY LIMITED BY GUARANTEE

“Company Limited by Guarantee” means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up [Section 2(21)].

Key ingredients are:

- Liability of its members limited
- By the memorandum
- To such amount
- As members respectively undertake to contribute
- To the assets of the company
- In event of its being wound up.
- The contribution from members are postponed to the event called winding up.

The procedure for incorporation of a company limited by guarantee is similar to the one required to be followed for getting a public or a private limited company incorporated. However, the following distinctive features in the case of a company limited by guarantee must be noted:

- (i) A company limited by guarantee may or may not have a share capital.
- (ii) A company limited by guarantee may be a public company or a private company.

In the case of a company limited by guarantee, the Memorandum shall state the amount up to which each member undertakes to contribute –

- (A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and
- (B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves. [Section 4(1)(d)(ii)]

Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.[Section 4(7)] and [Section 13(11)]

The following procedural steps are required to be taken for getting a company limited by guarantee registered:

(1) Paid-up Capital: There is no minimum paid up capital required for 'Guarantee Company'. The requirement to have minimum paid up capital is done away with.

(2) Selection of Name of the Company and Ascertaining its Availability from ROC: This is same as in case of public company limited by share.

(3) Drafting and Printing of Memorandum and Articles of Association: On receipt of name availability from the Registrar of Companies, get the memorandum and articles of association of the proposed company drafted by a competent professional. The Memorandum of association of a company limited by Guarantee and not having a share capital shall be in accordance with Table-B of Schedule-I. The Memorandum of association of a company limited by Guarantee and having a share capital shall be in accordance with Table-C of Schedule-I.

The Articles of association of a company limited by guarantee and having share capital shall be in accordance with Table – G of Schedule – I. The Articles of association of a company limited by guarantee and not having share capital shall be in accordance with Table – H of Schedule – I.

(4) Stamping and Signing of Memorandum and Articles: This is same as in case of public company limited by share.

(5) Dating of Memorandum and Articles: Thereafter the memorandum and articles will be dated. This date must be the date of stamping or later than the date of the stamping and not, in any event, a date prior to the date of the stamping.

(6) Filing of Forms and Documents with Registrar: This is same as in case of public company limited by share.

(7) Registration and Filing Fee: The fee shall be as provided in the Companies (Registration Offices and Fees) Rules, 2014.

(8) Scrutiny of Forms and Documents by Registrar: On receipt of the aforementioned documents and forms, the office of the Registrar of Companies will scrutinise them and if they are found complete in all respects, the Registrar will register the company and allot CIN. If the Registrar finds any defect or deficiency in any of the documents or forms, he shall send an electronic communication pointing out the defects and after the deficiencies are removed, the Registrar will register the company.

(9) Issue of Certificate of Incorporation by Registrar: A Certificate of Incorporation will be issued by the Registrar of Companies under his hand and seal of his office and sent electronically. One may take printout of Certificate of Incorporation which is generated online.

The date mentioned by the Registrar in the Certificate of Incorporation shall be the date of incorporation of the company, on which date the company will be considered to have come into existence as a legal entity independent of its members.

A company is required to maintain and preserve at its registered office copies of all documents and information as originally filled till its dissolution, if any person furnishes any false or incorrect particulars of any information he shall be liable for action under section 447 of the Act.

ONE PERSON COMPANY

Section 2(62) of the Companies Act, 2013 define “one person company” as a company which has only one person as member. OPC is a type of Private Company as per Section 2(68) and Section 3(1)(c).

Rule 3 of the Companies (Incorporation) Rules 2014 say, only a natural person who is an Indian citizen and resident in India:-

- (a) shall be eligible to incorporate a One Person Company;
- (b) shall be a nominee for the sole member of a One Person Company.

Resident in India means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

A person can incorporate only one “One Person Company”, at any point of time and the said person shall not be a nominee of more than a One Person Company.

The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber’s death or his incapacity to contract, become the member of that One Person Company. The name of the person nominated shall be mentioned in the memorandum of One Person Company and such nomination in Form INC-32 (SPICe), Single Application for Incorporation of Company, along with consent of such nominee obtained in Form INC – 3 and fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

Form INC-32 is form for incorporation of one person company.

PROCEDURE FOR INCORPORATION OF COMPANY FOR CHARITABLE AND OTHER PUBLIC UTILITY PURPOSES WITHOUT ADDITION OF THE WORDS “LIMITED” OR “PRIVATE LIMITED” TO ITS NAME

The issue of license and incorporation of companies to pursue charitable and other prescribed objects, with limited liability without the addition to its name of the word “Limited” or the words “Private Limited” are regulated by Section 8 of the Companies Act, 2013.

An association, desirous of being incorporated as a company with limited liability without the addition to its name of the word “Limited” or the words “Private Limited” shall take the following procedural steps for securing a License under Section 8 of the Companies Act, 2013 and for getting itself registered under the Act:

1. The application for reservation of name shall be in Form INC-32 (SPICe) i.e., Single Application for Incorporation of Company (herein only one name can be proposed) of the Companies (Incorporation) Rules, 2014. The procedure of making this application is same mentioned as discussed earlier.
3. A person or an association of persons (hereinafter referred to in this rule as “the proposed company”), desirous of incorporating a company with limited liability under sub-section (1) of section 8 without the addition to its name of the word “Limited”, or as the case may be, the words “Private Limited”, shall make an application in Form INC-12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a license under sub-section (1) of section 8. [Rule 19 of the Companies (Incorporation) Rules, 2014]
4. The memorandum of association of the proposed company shall be in Form INC – 13.

5. The application for grant of licence in form INC – 12 shall be accompanied by the following documents, namely: –
 - (a) the draft memorandum and articles of association of the proposed company;
 - (b) the declaration in Form INC – 14, by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;
 - (c) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
 - (d) the declaration by each of the persons making the application in Form INC - 15.
6. The licence shall be in Form INC – 16 and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him. The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.
7. After obtaining the licence, to get the memorandum and articles, as approved by the Registrar of Companies, printed and to ensure that the conditions of the license as directed by the Registrar of Companies are incorporated therein.
- 8. Filing of Forms and Documents with Registrar:** This is same as in case of public company limited by share.
- 9. Registration and Filing Fee:** The fee is as provided in Companies (Registration Offices and Fees) Rules, 2014.
- 10. Scrutiny of Forms and Documents by Registrar:** On receipt of the aforementioned documents and forms, the office of the Registrar of Companies will scrutinise them and if they are found complete in all respects, the Registrar will register the company and allot CIN. If the Registrar finds any defect or deficiency in any of the documents or forms, he shall send an electronic communication pointing out the defects and after the deficiencies are removed, the Registrar will register the company.
- 11. Issue of Certificate of Incorporation by Registrar:** A Certificate of Incorporation will be issued by the Registrar of Companies under his hand and seal of his office and sent electronically. One may take printout of Certificate of Incorporation which is generated online.

PROCEDURE FOR ISSUE OF LICENCE UNDER SECTION 8 TO A COMPANY ALREADY REGISTERED

A limited company registered under Companies Act, 2013 or under any previous company law may convert itself into a company licensed under Section 8 of the Companies Act, 2013.

1. The company shall make an application in Form INC – 12 along with the fee as provided to the Registrar for a license under sub-section (5) of section 8.
2. According to Section 8 of the Act, the applicants have to prove to the satisfaction of the Registrar of Companies that an association is already in existence as a limited company for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object and that the association intends to apply its profits, if any, or other income, for promoting its objects and that it prohibits the distribution of any dividend to its members.
3. Along with Form INC - 12, for issue of licence u/s 8, the following documents are also required to be attached:

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- (i) The memorandum and articles of association of the company;
 - (ii) The declaration as given in Form INC – 14 by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;
 - (iii) For each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year (i) the financial statements, (ii) the Board's reports, and (iii) the audit reports, relating to existing companies
 - (iv) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;
 - (v) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
 - (vi) the certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and
 - (vii) a declaration by each of the persons making the application in Form INC – 15.
 - (viii) List of proposed promoters.
 - (ix) List of proposed directors.
 - (x) List of key managerial personnel.
4. The company shall, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the notice, as published, shall be sent forthwith to the Registrar and the said notice shall be in Form INC – 26 and shall be published-
 - (i) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district; and
 - (ii) on the websites as may be notified by the Central Government.
 5. The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central Government or the State Government(s).
 6. The Registrar shall, after considering the objections, if any, received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of the Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.
 7. The licence shall be in Form INC – 16 or Form INC – 17, as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.
 8. The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

PROCEDURE FOR INCORPORATION OF A COMPANY AS SUBSIDIARY OF AN EXISTING COMPANY

As per provisions of Section 2(87) of the Companies Act, 2013, "Subsidiary Company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company –

- (i) controls the composition of the Board of Directors; or

- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. (Proviso is yet to be enforced)

Explanation. – For the purposes of this clause, –

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression “Company” includes any body corporate;
- (d) “layer” in relation to a holding company means its subsidiary or subsidiaries;

As per provisions of the Act, in order to make the proposed company, CD Ltd., a subsidiary of the existing company, AB Ltd., AB Ltd. must control the composition of the Board of Directors of CD Ltd. or it must exercise or control more than half of the total Share Capital in CD Ltd.

Keeping the above provisions in view, CD Limited shall become a subsidiary of AB Ltd. by a legal fiction and no separate application for registration of the subsidiary is required.

Section 186(1) prohibits a company to make investment through more than two layers of investment companies.

UNLIMITED COMPANIES

By virtue of Section 2(92) of the Act, an unlimited company is a company not having any limit on the liability of its members. Thus, the maximum liability of the members of such a company, in the event of its being wound up, could extend to their entire personal property to meet the debts and obligations of the company by contributing to its assets. However, the liability of the members is only towards the company and not towards company's creditors directly and hence, only the liquidators of the company can ask the members to contribute to its assets which will be used in the discharge of the company's debts and the cost of winding up.

Section 4 of the Act, provide that an Unlimited company must state in its memorandum that liability of its members is unlimited.

The Memorandum of an unlimited company shall be in the form in the Table – D (where not having share capital) or in Table – E (where having share capital) of Schedule I of the Act. The Articles of an unlimited company shall be in the Form in Table – I (where having share capital) or in Table – J (where not having share capital) of Schedule I to the Act.

As per the provisions of Section 65, an unlimited company may convert itself into a limited company.

The procedure for incorporation of such companies is similar to that of companies with limited liability.

PROCEDURE TO FORM A NIDHI COMPANY

“Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies. [Section 406]

According to Rule 4 of Nidhi Rules, 2014, a Nidhi Company shall be a public company and must have a minimum paid up equity share capital of five lakh rupees. The Nidhi Company shall have only one object in its memorandum

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that is of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit. Every Company incorporated as a “Nidhi” shall have the last words ‘Nidhi Limited’ as part of its name.

Rule 5 provides that, every Nidhi shall, within a period of one year from the commencement of these rules, ensure that it has:

- (a) Not less than two hundred members.
- (b) Net Owned Funds of ten lakh rupees or more.
- (c) Unencumbered Term Deposits of not less than ten per cent of the outstanding deposits.
- (d) Ratio of Net Owned Funds to deposits of not more than 1:20.

The process of incorporation of a Nidhi company is same as of incorporation of a public company limited by shares.

PROCEDURE TO REGISTER A FOREIGN COMPANY IN INDIA

As per Section 2 (42) “foreign company” means any company or body corporate incorporated outside India which –

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

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(1)] –

- (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.

In addition to above, a list of directors and Secretary of company, needs to be delivered to the Registrar (Rule 3) of Companies (Registration of Foreign Companies) Rules, 2014.

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 and the application shall also be supported with an attested copy of approval from Reserve Bank of India under Foreign Exchange Management Act or Regulations and also from other Regulators, if any. Along with the Companies Act, 2013 provision of Foreign Exchange Management Act 1999 and regulations made thereunder shall also be applicable.

Regulatory provisions under Foreign Exchange Management (Establishment in India of Branch or Office or other place of business) Regulations, 2000

A foreign company or individual planning to set up business operations in India can do so through a Liaison Office / Representative Office, Project Office or a Branch Office. The FEM (Establishment in India of Branch or Office or other place of business) Regulations, 2000 govern the opening and operation of such offices.

Accordingly, Companies incorporated outside India, desirous of opening a Liaison/Branch office in India have to make an application in form FNC. It may be noted that RBI has authorized AD Category I bank to forward FNC along with the necessary enclosures along with the comments and recommendations to –

The Chief Manager-in-charge, Reserve Bank of India, Foreign Exchange Department, Central Office Cell, New Delhi.

The applications will be considered by Reserve Bank of India under Reserve Bank route or Government route. For full details, please refer to the Master Circular No. RBI/2012-13/7 dated July 2, 2012 as amended from time to time.

CONVERSION OF COMPANIES

A company can be converted from one type to another.

Section 18 of the Companies Act, 2013 deals with conversion of companies already registered. A company already registered in a class may convert itself as a company of another class by alteration of memorandum and articles of the company. An application in this regard is required to be made to Registrar. The Registrar after being satisfied that all provisions have been complied with, shall close the former registration of the company. After registering the documents relating to conversion, the Registrar shall issue a certificate of incorporation. The conversion of a company shall not affect any debt, liabilities and obligations. Such debt, liabilities, obligation and contracts may be enforced as if there is no such conversion.

CONVERSION OF ONE PERSON COMPANY TO PRIVATE COMPANY/PUBLIC COMPANY

No one person company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees. [Rule 3(7) of the Companies (Incorporation) Rules, 2014]

After two years from the date of Incorporation, one person company may convert into any other company even without threshold limit.

Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company. [Rule 6(1) of the Companies (Incorporation) Rules, 2014]

The One Person Company shall within period of sixty days from the date of applicability, give a notice to the Registrar in Form INC – 5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into either a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit.

Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.

Procedure for Conversion of One Person Company to Private Company / Public Company

1. Where One Person Company has only one director, following resolutions shall be signed and dated by the director and shall be entered into minute – book:
 - a. Take note about exceeding the threshold limits if applicable.
 - b. Authorising giving Notice to the Registrar in Form INC – 5.
 - c. Notice with Explanatory Statement for Special resolutions to be signed, dated and communicated by the member to the company regarding:
 - i. Alteration of Article for conversion, example Regulations 27, 48, ad 76 for Table – F in Schedule-I where adopted;
 - ii. Alteration of Memorandum (name clause)
 - iii. Alteration of Memorandum (Capital clause), to increase capital if required
 - iv. Alteration of Memorandum to amend the reference of the name of one person and its nominee
2. Where One Person Company has more than one director, convene a Board meeting to:
 - a. Take note about exceeding the threshold limits if applicable.
 - b. Board Resolution for giving Notice to the Registrar
 - c. Notice with Explanatory Statement for Special resolutions to be signed, dated and communicated by the member to the company regarding:
 - i. Alteration of Article for conversion, example Regulations 27, 48, ad 76 for Table – F in Schedule – I where adopted;
 - ii. Alteration of Memorandum (name clause)
 - iii. Alteration of Memorandum (Capital clause), to increase capital if required
 - iv. Alteration of Memorandum to amend the reference of the name of one person and its nominee
3. Special Resolutions to be signed, dated and communicated by the member to the company and entered by the company into minutes;
4. Copy of Special Resolutions along with explanatory statements to be filed within thirty days with the Registrar in Form MGT – 14 and copy of altered Memorandum and articles shall be attached therewith.
5. Increase the number of members to minimum two in case converted company is a private company, or to minimum seven in case converted company is a public company;
6. Where number of director are below the requirement of the Act for converted company, increase the number of director to two in case of private company or to three in case of public company;
7. Obtain from the Registrar of Companies, fresh Certificate of Incorporation consequent upon conversion of the one person company into a private company or public company;
8. Have fresh copies of the altered memorandum and articles of association printed incorporating the changes or effect changes in all copies of the memorandum and articles of association lying in the office of the company, and in letter heads, invoice forms, receipt forms, all other stationery items, and at every other place where the name of the company appears.

9. Issue, if necessary, a general notice in newspapers informing members and all other concerned persons and public at large that the company has become a public company and its name has been changed fromOPC to Pvt. Ltd. or Limited with effect from
10. Inform all concerned persons/authorities about the conversion of the company from private company to public company and about the change of its name, particularly to the Central Excise authorities, income tax authorities, Sales tax authorities in various States, Customs authorities, Chief Inspector of Factories, Regional Provident Fund Commissioner, other regulatory authorities, suppliers of raw materials, customers, banks etc.
11. If a company opts to have a common seal, arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors of the company and keep both the old and the new Common Seals in safe custody under lock and key.
12. To have stationery printed with the new name and/or affix rubber stamp of the new name on all the existing stationery items including the share certificates blanks.
13. Have painted the new name of the Company on all the sign boards wherever they are displayed.

In case of voluntary conversion of One Person Company to Private company or Public Company, the procedure abovementioned shall be same but requirement for filing Form INC – 5 shall not be applicable.

CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY (RULE 7)

- (1) A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less and average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.
- (2) Before passing such resolution, the company shall obtain No objection in writing from members and creditors.
- (3) The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in **Form No. MGT.14**.
- (4) The company shall file an application in **Form No. INC.6** for its conversion into **One Person Company** along with fees as provided in the **Companies (Registration offices and fees) Rules, 2014**, by attaching the following documents, namely:-
 - (i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;
 - (ii) The list of members and list of creditors;
 - (iii) The latest Audited Balance Sheet and the Profit and Loss Account; and
 - (iv) The copy of No Objection letter of secured creditors.
- (5) On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

CONVERSION OF PRIVATE COMPANY INTO PUBLIC COMPANY

Section 14 of the Act lays down the procedure for alteration of articles. A company may alter its articles including alterations having effect of conversion of

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- a private company into a public company or
- a public company into private company

with the approval of members through special resolution.

For conversion, the private company is required to take the following procedural steps :

1. convene a Board meeting to:
 - a. for approving proposal for conversion of the company into a public company;
 - b. for fixing time, date and venue for holding a general meeting of the company for passing the required special resolution through postal ballot for conversion of the company into a public company.
 - c. for approving notice for the general meeting along with the explanatory statement as required. The notice shall contain texts of the special resolutions which will be required to be passed at the meeting; and
 - d. for authorising the company secretary or any other competent officer to issue notice of the general meeting on behalf of the Board.

The following resolutions will be required to be passed at the general meeting:

- i. Alteration of Article for conversion,
- ii. Alteration of Memorandum (name clause)
- iii. Alteration of Memorandum (Capital clause), to increase capital if required

Note: The articles of association of the company shall be altered in such a manner that they would -

- (i) no longer contain the provisions which, under clause (68) of Section 2 of the Act, are required to be included in its articles in order to constitute it a private company;
- (ii) include all the provisions, which are required to be contained in the articles of a public company; and
- (iii) remove all the provisions which are inconsistent with the requirements of a public company.

The company may alter any number of articles or alternatively adopt a new set of articles. The resolution altering the articles must contain full text of all the alterations.

2. Hold the general meeting and have the aforementioned special resolutions passed. (Refer to Rule 22(16) of Companies (Management and Administration) Rules, 2014.
3. Copy of Special Resolutions along with explanatory statements to be filed within thirty days with the Registrar in Form MGT – 14 and copy of altered Memorandum and articles shall be attached therewith.
4. Increase the number of members to minimum seven; (Section 3)
5. Increase the number of director to three; (Section 149)
6. A copy of order of the Tribunal approving the alteration shall be filed with the Registrar in Form INC – 27 with fee together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Tribunal.
7. Obtain from the Registrar of Companies, fresh Certificate of Incorporation consequent upon conversion of a private company into public company;

8. Have fresh copies of the altered memorandum and articles of association printed, incorporating the changes or effect changes in all copies of the memorandum and articles of association lying in the office of the company, and in letter heads, invoice forms, receipt forms, all other stationery items, and at every other place where the name of the company appears.
9. Issue, if necessary, a general notice in newspapers informing members and all other concerned persons and public at large that the company has become a public company and its name has been changed from..... Pvt. Ltd. To Limited with effect from
10. Inform all concerned persons/authorities about the conversion of the company from private company to public company and about the change of its name, particularly to the Central Excise authorities, income tax authorities, Sales tax authorities in various States, Customs authorities, Chief Inspector of Factories, Regional Provident Fund Commissioner, other regulatory authorities, suppliers of raw materials, customers, banks etc.
11. If a company opts to have a common seal, arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors of the company and keep both the old and the new Common Seals in safe custody under lock and key.
12. To have stationery printed with the new name and/or affix rubber stamp of the new name on all the existing stationery items including the share certificates blanks.
13. Have painted the new name of the Company on all the sign boards wherever they are displayed.

CONVERSION OF PUBLIC COMPANY INTO A PRIVATE COMPANY

According to Section 2(68) of the Companies Act, 2013 “**Private Company**” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, (Presently no minimum capital is prescribed) –

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that –

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

- (iii) prohibits any invitation to the public to subscribe for any securities of the company;

In view of the above provisions, a public company may become a private company if its membership is within the limits in clause (68) of Section 2 of the Act, as mentioned above. Such a company is required to take the following procedural steps:

1. Hold a meeting of its Board of directors to consider and approve the proposal for conversion of public company into private company.

The following resolutions must be passed at the meeting:

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- (i) To approve the proposal for conversion of the company into private company.
 - (ii) To fix time, date and venue for holding an extraordinary general meeting of the company.
 - (iii) To approve notice for the general meeting along with the explanatory statement as required under Section 102 of the Act. The notice for the general meeting must contain text of the special resolutions, which will be required to be passed at the general meeting. The notice of the general meeting must contain text of the following resolutions, which will be required to be passed at the meeting:
 - (a) Special resolution for altering the articles of the company, as required under Section 14 of the Companies Act, 2013.
 - (b) Special resolution for changing the name of the company as required under proviso to Section 13 of the Act.
 - (c) Special resolution for altering the memorandum of association (name clause) of the company in accordance with Section 16 of the Act.
 - (iv) To authorize the company secretary or some competent officer to issue the notice of the general meeting on behalf of the Board.
2. Hold general meeting and have the aforementioned special resolutions passed.
 3. Within thirty days of passing of the special resolutions, file **Form MGT 14** with copy of resolution along with explanatory statement under Section 102 and amended copy of Articles of Association as attachment along with prescribed filing fee payable in the mode described earlier.
 4. If the number of members of the company is above 200, appropriate steps should be taken to reduce the number to 200 or below.
 5. Send to the stock exchanges where the securities of the company are listed, six copies including one certified copy of the amendments to the articles of association of the company as soon as they been approved by the company in general meeting.
 6. Any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit. (Effective w.e.f. 1st June, 2016)

The application in electronic **Form INC 27** must have scanned/digitized copy of the following duly attached with it:

 - (i) A copy of the minutes of the meeting of members where resolution has been passed.
 - (ii) Copy of any approval order obtained from the concerned authorities (such as RBI, IRDA, SEBI etc.) or the concerned department.
 7. If the Registrar of Companies so directs, publish a notice in newspaper(s) as per his direction.
 8. Send to the stock exchanges where the securities of the company are listed, three copies of proceedings of the general meeting at which the special resolution was passed and also three copies of the newspaper advertisement of notice.
 9. After the alteration of the articles has been approved by the Tribunal, a copy order of Tribunal approving the alteration with fee together with a printed copy of the altered articles of the company should be filed with the concerned Registrar of Companies in **Form INC 27** within fifteen days of the date of receipt of the order of approval. (Section 14(2) – Come into force w.e.f. from 1st June, 2016. MCA vide Notification No. S.O. 1934(E) dated 1st June, 2016)

10. Surrender to the Registrar, the Certificate of Incorporation of the company in order to obtain fresh Certificate of Incorporation consequent upon change of name on conversion of the company into a private company.
11. Change the name of the company in all copies of the memorandum and articles of association lying in the office of the company, letter heads, invoice forms, receipt forms, all other stationery items, common seal of the company, sign boards and at every other place where the name of the company appears.
12. If required, issue a general notice in newspapers informing members and public at large that the company has been converted into a private limited company and its name has been changed from..... Limited to..... Private Limited with effect from.....

It is important to note that the company becomes a private company with effect from the date of approval of the Tribunal under the proviso to Section 14 of the Companies Act, 2013, the change in the name of the company shall be effective from the date of issue of fresh Certificate of Incorporation consequent upon conversion into a private company, by the Registrar of Companies.

CONVERSION OF SECTION 8 COMPANY INTO A COMPANY OF ANY OTHER KIND (RULE 21)

- (1) A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.
- (2) The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely:-
 - (a) The date of incorporation of the company;
 - (b) The principal objects of the company as set out in the memorandum of association;
 - (c) The reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;
 - (d) If the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;
 - (e) what are the privileges or concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc
 - (f) Details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.
- (3) The company shall send a copy of the notice, simultaneously with its publication, together with a copy of the application and all attachments by registered post or hand delivery, to the Chief Commissioner of Income Tax having jurisdiction over the company, Income Tax Officer who has jurisdiction over the company, the Charity Commissioner, the Chief Secretary of the State in which the registered office of the company is situated, any organization or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating and if any of these authorities wish to make any representation to Regional Director, it shall do so within sixty days of the receipt of the notice, after giving an opportunity to the Company

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- (4) A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in **Form No. MGT.14** along with the fee.
- (5) The company shall file an application in **Form No. INC.18** with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned above.
- (6) A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.
- (7) The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in **Form No. INC.19** and shall be published-
- (a) 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; and
 - (b) On the website of the company, if any, and as may be notified or directed by the Central Government.
- (8) The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise to persons who are or have been members of the company or to any one or more of them or to any persons claiming through any one or more of them.
- (9) Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organization or Department of Central Government, State Government, Municipal Body or any recognized authority, a "**No Objection Certificate**" must be obtained, if required under the terms of the said special status, privilege, exemption, benefit or grant(s) from the concerned authority and filed with the Regional Director, along with the application.
- (10) The company should have filed all its financial statements and Annual Returns up to the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director and in the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.
- (11) The company shall attach with the application a certificate from practicing Chartered Accountant or Company Secretary in practice or Cost Accountant in practice certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.
- (12) The Regional Director may require the applicant to furnish the approval or concurrence of any particular authority for grant of his approval for the conversion and he may also obtain the report from the Registrar
- (13). On receipt of the application, and on being satisfied, the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case including the following conditions, namely:-

- (a) the company shall give up and shall not claim, with effect from the date its conversion takes effect, any special status, exemptions or privileges that it enjoyed by virtue of having been registered under the provisions of section 8;
 - (b) if the company had acquired any immovable property free of cost or at a concessional cost from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property at the time of conversion either to the government or to the authority that provided the immovable property;
 - (c) any accumulated profit or unutilized income of the company brought forward from previous years shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, service providers and others including employees and lastly any loans advanced by the promoters or members or any other amounts due to them and the balance, if any, shall be transferred to the Investor Education and Protection Fund within thirty days of receiving the approval for conversion;
- (14) Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director
- (15) On receipt of the approval of the Regional Director,
- (i) The company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind;
 - (ii) The Company shall thereafter file with the Registrar.-
 - (a) A certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in **Form No. INC.20** along with the fee;
 - (b) Amended memorandum of association and articles of association of the company.
 - (c) A declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.
- (16) On receipt of the documents as mentioned above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation

CONVERSION OF UNLIMITED LIABILITY COMPANY INTO A LIMITED LIABILITY COMPANY BY SHARES OR GUARANTEE (RULE 37)

- (1) An unlimited liability company with or without share capital which intends to convert itself into limited liability company by shares or guarantee, shall pass a special resolution in a general meeting.
- (2) The Company shall within seven days from the date of passing of the special resolution in a general meeting, publish a notice, in **Form No. INC-27A** of such proposed conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situated.
- (3) The company shall also place the same on the website of the Company, if any, indicating clearly the proposal of conversion of the company into a company limited by shares or guarantee, and seeking objections if any, from the persons interested in its affairs to such conversion and cause a copy of such notice to be dispatched to its creditors and debenture holders made as on the date of notice of the general meeting by registered post or by speed post or through courier with proof of dispatch.
- (4) The notice shall also state that the objections, if any, may be intimated to the Registrar and to the company within twenty-one days of the date of publication of the notice, duly indicating nature of interest and grounds of opposition.

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(5) The Company shall within forty five days of passing of the special resolution, file an application in Form No. INC-27 for its conversion into a company limited by shares or guarantee alongwith the fees as provided in the Companies (Registration offices and Fees) Rules, 2014, by attaching the following documents, namely:-

- a) notice of the general meeting along with explanatory statement;
- b) copy of the resolution passed in the general meeting;
- c) copy of the newspaper publication;
- d) a copy of altered Memorandum of Association as well as Articles of Association duly certified by any one of the Directors duly authorised in this behalf or Company Secretary of the Company, if any.
- e) declaration signed by not less than two Directors of the Company, including Managing Director, if any, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion (except to the extent that the liability of the members shall become limited).
- f) a complete list of creditors and debenture holders, to whom individual notices have been sent setting forth the following details, namely:-
 - i. the names and address of every creditor and debenture holder of the Company;
 - ii. the nature and respective amounts due to them in respect of debts, claims or liabilities;
 - iii. declaration by a Director of the Company that notice as required in point (2) has been dispatched to all the creditors and debenture holders with proof of dispatch.
- g) a declaration signed by not less than two Directors of the Company, one of whom shall be a Managing Director where there is one, to the effect that they have made a full enquiry into the affairs of the Company and having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge.
- h) a declaration of solvency signed by at least two Directors of the Company, one of whom shall be the Managing Director, where there is one to the effect that the Board of Directors of the Company have made a full inquiry into the affairs of the company, as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration, through a resolution, passed in a duly convened meeting or by circulation.
- i) The company shall also obtain a certificate from the Auditors that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency.
- j) No Objection Certificate from sectoral regulator, if applicable.
- k) No Objection Certificate from all secured creditors, if any.
- l) Declaration signed by not less than two Directors including Managing Director, where there is one, that no complaints are pending against the company from the members or investors and no inquiry, inspection or investigation is pending against the company or its Directors or officers.

(6) The Registrar shall, after considering the application and objections if any, received by the Registrar and after ensuring that the company has satisfactorily addressed the objections received by the company, suitably decide whether the approval for conversion should or should not be granted.

(7) The certificate of incorporation consequent to conversion of unlimited liability company into a company limited by shares or guarantee be in Form INC-11A issued to the company upon grant of approval for conversion.

(8) Conditions to be complied with subsequent to conversion of the Company:

- a) Company shall not change its name for a period of one year from the date of such conversion.
- b) The company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts incurred or entered into before conversion.
- c) Explanation: For the purpose of this clause, past debts, liabilities, obligations or contracts do not include secured debts due to banks and financial institutions.

(9) An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee in case:

- a) its net worth is negative, or
- b) an application is pending under the provisions of the Companies Act, 1956 or the Companies Act, 2013 for striking off its name, or
- c) the company is in default of any of its Annual Returns or financial statements under the provisions of the Companies Act, 1956 or the Companies Act, 2013, or
- d) a petition for winding up is pending against the company, or
- e) the company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or
- f) an inquiry, inspection or investigation is pending against the company.

(10) The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects.

CONVERSION OF A COMPANY LIMITED BY GUARANTEE INTO A COMPANY LIMITED BY SHARES (RULE 39)

(1) A company other than a company registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013 may convert itself into a company limited by shares.

(2) The company seeking conversion shall have a share capital equivalent to the guarantee amount.

(3) A special resolution is passed by its members authorising such a conversion, omitting the guarantee clause in its Memorandum of Association and altering the Articles of Association to provide for the articles as are applicable for a company limited by shares.

(4) A copy of the special resolution shall be filed with the Registrar of Companies in Form no. MGT- 14 within thirty days from the date of passing of the same along with fee as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.

(5) An application in Form No. INC-27 shall be filed with the Registrar of Companies within thirty days from date of the passing of the special resolution enclosing the altered Memorandum of Association and altered Articles of Association and a list of members with the number of shares held aggregating to a minimum paid up capital which is equivalent to the amount of guarantee hitherto provided by its members.

(6) The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects and upon approval of Form No. INC-27, the company shall be issued with a certificate of incorporation in Form No. INC-11B.

PRE-INCORPORATION AGREEMENTS AND CONTRACTS

It is likely that due to non availability of a suitable name, lack of clarity among the promoters or for other reasons, the formation of a company may take time. In the meanwhile, the promoters may enter into contracts on behalf of

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proposed company, like purchase of land, ordering machinery, employing key personnel, investment tie up etc. and also incur expenses relating to incorporation of the company. These must be ratified on the incorporation of the company.

The Articles must authorize the directors to pay the expenses relating to registration of the company. The directors do not have any implied power to incur pre-incorporation expenses.

As per section 15 of Specific Relief Act, 1963; if promoters have made a contract before incorporation of a company for the purpose of the proposed company, and if the contract is warranted by the terms of incorporation, the company may adopt and enforce the contract. The term 'warranted by the terms of incorporation' means 'within the scope of the company's objects as stated in the memorandum of the company'. Thus, the contract should be for the purposes of the company. As per section 19 of Specific Relief Act, 1963, if the pre-incorporation contract is adopted or accepted by the company after its incorporation and if it is within the terms of incorporation, the other party can also enforce the contract, if such acceptance was communicated to other party to the contract.

However, pre-incorporation contracts are not binding upon the company, if these are not adopted or accepted by the company after its incorporation. Adoption or acceptance of contracts practically means ratification of contract. A Board resolution should be passed for adoption of pre-incorporation contracts at the first Board meeting of the company. On passing such resolution, the contract shall be binding on the company.

The procedure for ratification of pre-incorporation contract is as under:-

Ensure that the power to enter and adopt pre-incorporation contracts is given in the objects, incidental or ancillary to the attainment of the main objects clause of the memorandum of the company.

Ensure that the articles also give power to the directors to adopt such pre-incorporation contracts in the board meeting.

Prepare a statement of the pre-incorporation contracts giving the amount involved in the each contract separately.

Convene the first board meeting after giving notice to all the directors of the company as per section 173 and place the above mentioned statement before the board meeting.

The statement should be initialed by the Chairman of the Board meeting and then pass a resolution adopting the pre-incorporation contract.

If the company is public company, then file a copy of the resolution with the concerned Registrar of Companies along with the statement in lieu of prospectus in form PAS – 2.

The said e-form is to be digitally signed by the managing director or director or manager or secretary of the company duly authorised by the Board of Directors.

ANNEXURES

SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING ARTICLES OF A PRIVATE COMPANY CONVERTING IT INTO A PUBLIC COMPANY

“RESOLVED THAT pursuant to the applicable provisions of the Companies Act, 2013, the company be and is hereby converted into a public company;

RESOLVED FURTHER THAT the name of the company be and is hereby changed from Private Limited to Limited; and

RESOLVED FURTHER THAT the regulations contained in the document submitted for consideration and approval of this meeting, and initialed by the chairman of the meeting for the purpose of identification, be and are hereby approved and adopted as the articles of association of the company in substitution for, and to the exclusion of, the present articles of association of the company.”

Explanatory Statement

The Board of directors of the company, at its meeting held on, discussed the pros and cons of a public limited company and a private limited company, and decided to convert the company into a public limited company and also decided that the present articles of association of the company, which were adopted by the company when it was incorporated as a private limited company, be also substituted by a new set of articles.

Since the proposed alterations, deletions, insertions etc. to the present articles of association were numerous, the Board decided that it would be convenient to adopt an altogether new set of articles of association incorporating all the proposed alterations.

Your directors commend the proposed special resolution for your consideration and adoption of the new set of articles of association of the company in place of the existing articles of association of the company.

None of the directors is concerned or interested in the proposed resolution.

SPECIMEN OF THE SPECIAL RESOLUTION FOR CHANGE OF NAME OF THE COMPANY AS PER PROVISIO TO SECTION 13(2) OF THE ACT

“RESOLVED THAT pursuant to the proviso to Section 13(2) of the Companies Act, 2013, the name of the company be and is hereby changed from “..... Private Limited” to “..... Limited” and the name clause in the memorandum and articles of association of the company be also accordingly altered.

Explanatory Statement

The Board of directors of the company had, at its meeting held on, resolved that the consequent upon conversion of the company from private limited company to public limited company, the name of the company be changed from “..... Private Limited” to “..... Limited”

No director is concerned or interested in the proposed resolution.

SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING THE MEMORANDUM OF ASSOCIATION (NAME CLAUSE) OF THE COMPANY IN ACCORDANCE WITH SECTION 13 OF THE ACT

“RESOLVED THAT pursuant to section 13 of the Companies Act, 2013, Clause I of the Memorandum of Association of the company be and is hereby altered by substituting the same with the following:

“Clause I. The name of the company is Limited.”

Explanatory Statement

The Board of directors of the company had, at its meeting held on, resolved that the consequent upon conversion of the company from private limited company to public limited company, Clause I of the memorandum of association of the company be substituted with “The name of the company is..... Limited”.

Hence the proposed special resolution is commended for approval by the members. No director is concerned or interested in the proposed resolution.

**SPECIMEN OF GENERAL NOTICE OF THE COMPANY ON BECOMING A PUBLIC COMPANY AND
CONSEQUENT CHANGE OF NAME OF THE COMPANY**

Name of the Company (new)

Registered Office Address

PUBLIC NOTICE

All concerned are hereby informed that the name of the Company has been changed from “..... Private Limited” to “..... Limited” with effect from as per FRESH CERTIFICATE OF INCORPORATION CONSEQUENT UPON CHANGE OF NAME issued by the Registrar of Companies, on the day of, 20.....

The registered office of the company continues to be situated at

Place: for Limited

Date: (.....)

Company Secretary

NOT TO BE PUBLISHED

For publication in the,,, and editions of the English daily and, Hindi Daily, for Limited

(.....)

Company Secretary

**SPECIMEN OF NOTICE FOR THE BOARD MEETING FOR CONVENING GENERAL MEETING FOR
ALTERATION OF ARTICLES TO CONVERT A PUBLIC COMPANY INTO A PRIVATE COMPANY**

Shri Managing Director

Shri Whole-time Director

Shri Director

Shri Director

Shri Director

Shri Director

Dear Sirs,

Notice is hereby given that the next meeting of the Board of directors of the company will be held at Hrs. on (day), (month) 20..... at the Corporate Office of the company at to transact the following business:

1. To grant requests from directors for leave of absence, if any.
2. To confirm the minutes of the previous Board Meeting held on and the chairman to sign the same.
3. Directors to make disclosure of their interest, or changes thereof, if any.
4. To discuss and approve financial results for the quarter ended and to authorise the chairman to sign the same on behalf of the Board of directors of the company.

5. To authorise the company secretary to arrange for the publication of the approved financial results in the English daily newspaper and the Hindi daily newspaper in their earliest available editions and also to send the same to the stock exchanges where the securities of the company are listed within forty-eight hours of the close of the Board meeting.
6. To fix time, date and venue for holding an extraordinary general meeting of the company to transact the business as detailed in the agenda including an item for conversion of the company into a private company the draft whereof would be placed before the meeting as initialled by the chairman as a mark of identification.
7. To authorise the company secretary or any director to issue notice for the general meeting on behalf of the Board in accordance with the provisions of Section 101 of the Companies Act, 2013 along with the Explanatory Statement as required under Section 102 of the Act.
8. Any other business with the permission of the chair.

Please make it convenient to attend the meeting. Thanking you,

Yours faithfully

(.....)

Company Secretary

SPECIMEN OF SPECIAL RESOLUTION ALTERING ARTICLES OF THE COMPANY SO AS TO INCLUDE RESTRICTION, LIMITATION AND PROHIBITION, SPECIFIED IN SECTION 2(68) OF THE ACT, CONVERTING A PUBLIC COMPANY INTO A PRIVATE COMPANY

“RESOLVED THAT pursuant to proviso to Sub-section (1) of Section 14 of the Companies Act, 2013 and subject to the approval of the National Company Law Tribunal*, the company be and is hereby converted into a private company.

RESOLVED FURTHER THAT the articles of association of the company be and are hereby altered by inserting the following new article as article No..... after article No. :

“Article No.....

The company is a private company and accordingly -

- (a) limits the number of its members to two hundred not including –
 - (i) persons who are in the employment of the company; and
 - (ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; and
- (b) prohibits any invitation to the public to subscribe for any security of, the company;
- (c) restricts the right to transfer its shares, provided that where two or more persons hold one or more shares in the company jointly, they shall, for the purposes of this article, treated as a single member; and

RESOLVED FURTHER THAT the name of the company be and is hereby accordingly changed from Limited to Private Limited.

RESOLVED FURTHER THAT the secretary of the company be and is hereby authorised to make an application in the prescribed Form, along with the prescribed enclosures and the prescribed application fee

*NCLT is notified with effect from 1st June, 2016 MCA vide Notification No. S.O. 1932(E) dated 1st June, 2016.

Explanatory Statement:

The company was originally incorporated as a public company. During the course of its operations, it was found that the company has to comply with various onerous provisions of the Act as applicable to public companies. Since the company is a family owned company with very few shareholders, its requirements of funds is being met by the shareholders, directors or their relatives. As the company does not intend to borrow any public funds for its operations, there is no point in retaining the public character of the company. The Board of directors of the company, at its meeting held on resolved to convert the company into a private company.

Accordingly, it is proposed to pass a special resolutions for conversion of the company into a private company and effect consequent alterations in the Articles of Association as applicable to a private company.

A copy of the existing memorandum and articles of association of the company is available for inspection at the registered office of the company during the business hours on any working day.

None of the directors is concerned or interested in the proposed resolution.

SPECIMEN OF BOARD RESOLUTION FOR CALLING A GENERAL MEETING

“RESOLVED THAT an extraordinary general meeting of the company be and is hereby called to be held at Hrs. on (day) (month)20..... at the registered office of the company at for, *inter alia*, passing the special resolutions for -

- (i) conversion of the company into a private company in accordance with Section 14(1) of the Companies Act, 2013;
- (ii) for change of name of the company in accordance with Section 13 of the Companies Act, 2013;
- (iii) for alteration of articles of association of the company so as to include, the required restrictions, limitation and prohibition specified in Section 2(68) of the Companies Act, 2013, delete all provisions that are inconsistent therewith in accordance with Section 14 read with Section 2(68) of the Companies Act, 2013 and include articles which are required for required for a private company ; and
- (iv) for alteration of the name clause in the memorandum of association of the company in accordance with the provision of Section 13 of the Act.”

SPECIMEN OF GENERAL NOTICE ON THE COMPANY BECOMING A PRIVATE COMPANY AND CONSEQUENT CHANGE OF NAME OF THE COMPANY

Registered Office Address

PUBLIC NOTICE

All concerned are hereby informed that the name of the Company has been changed from “..... Limited” to “..... PRIVATE LIMITED”..... with effect from as per FRESH CERTIFICATE OF INCORPORATION CONSEQUENT UPON CHANGE OF NAME issued by the Registrar of Companies, on the day of , 20.....

The registered office of the company.....continuestobesituatedat

Place: for Limited
 Date: (.....)
 Company Secretary

MODEL GENERAL POWER OF ATTORNEY

(On non-judicial Stamp Paper of Requisite Value)

The Registrar of Companies

.....
.
.....
.

I/We, the undersigned, subscribers to the Memorandum and Articles of Association,
do hereby authorise Shri son of..... resident
of..... to make any alteration, addition, correction, deletion, amendment, and such other
work as may be necessary on our behalf in the Memorandum and Articles of Association and all other documents
filed with you relating to the registration of the above-mentioned company and attest the same on my/our behalf and
to receive/collect the Certificate of Incorporation on our behalf and to do such other things as may be necessary in
connection with the incorporation of the above named company.

Accepted.

Place: Subscriber(s) to the Memorandum and Articles of Association

Date:

**SPECIMEN OF BOARD RESOLUTION FOR ADOPTION OF
PRE-INCORPORATION CONTRACTS**

RESOLVED that the preliminary expenses for ` incurred by the promoters of the company for the purpose
of its incorporation as per the statement placed before the meeting be and are hereby approved.

RESOLVED FURTHER that the preliminary contracts entered into by the promoters in connection with the
incorporation of the company as per the statement before the meeting be and are hereby approved.

LESSON ROUND UP

- Before starting a business, one needs to select the form of business entity. For taking this decision, one must look into advantages of one form of business on another; amount to be invested, objects of the business etc.
- To register a company, one needs to first apply for a Director Identification Number (DIN) which can be done by filing e-Form for acquiring the DIN. Then one should acquire the Digital Certificate and register the same on the portal. Thereafter, one needs to get the company name approved by the Ministry of Corporate Affairs. Once the company name is approved, one can register the company by filing the incorporation forms depending on the type of company.
- For incorporation of a public limited company having share capital, Form INC-1, INC-7 or INC-32, INC-8 INC-9, INC 21 and INC-22 are required to be filed with the Registrar of Companies through MCA portal. Along with e-form 1, Memorandum of Association, Articles of Association, name approval letter are required to be attached.
- Procedure for incorporation of Company limited by Guarantee, for public company having a share capital, one person company, company for charitable and other public utility purposes without addition of the words “limited” or “ private limited “ to its name is dealt with in the Chapter in detail.
- During the continuity of business, it may be found beneficial to convert one form of entity into another form of business entity. Companies Act provides the scope to convert one form of entity into another form of entity. The Chapter has dealt with in detail the procedure for conversion of Private company into public

Lesson 2

Procedure for Alteration of Memorandum and Articles

LESSON OUTLINE

- Procedure for change of name of the company
- Rectification of name of Company
- Procedure for change of objects of the company
- Procedure for change of registered office of the company
- Alteration of Articles of Association of the Company
- Effect of Alteration of Articles
- Annexure – Specimen Resolutions
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The expression 'alter' means to modify change or vary; to make or become different; to change in character, appearance, etc; to change in some respect. As per section 2(3) of the Companies Act, 2013 "alter" and "alteration" shall include the making of additions, omissions and substitutions. In accordance with this definition of alteration, an addition or an omission of a provision or a clause, a word, a phrase or an expression would be regarded, an alteration. The alteration of memorandum or alteration of articles requires the Compliances of section 13 and 14 respectively.

The scheme of the Act prescribes elaborately the scope of alteration and the procedure for effecting alteration of the Memorandum and Articles which may be permissible for a company under the Act.

After reading this lesson, the students will be able to understand the procedural aspects relating to alteration in the clauses of Memorandum and Articles of Association of the Company.

1. CHANGE OF NAME OF A COMPANY

A company desiring to change its name may do so in accordance with the provisions of Section 13 of the Companies Act, 2013. The section lays down that a company may, by special resolution and with the approval of the Central Government signified in writing, change its name. The power of the Central Government under Section 13(2) to approve change in the name has been delegated to Registrar of Companies. However, if the only change required is the addition thereto or deletion there-from, of the word "Private", consequent upon conversion of any one class of Companies to another class, no such approval of Central Government is required.

The change of name is not allowed to a company which has not filed annual returns or financial statements are due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon:

However, name change shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be.

In the light of the above provisions of Section 13 of the Act, the company has to take the following procedural steps:

CHANGE OF NAME BY RECTIFICATION

The Company after incorporation can change their name by following way:

- (a) Conversion of name from private to public, or
- (b) Conversion of name from public to private, or
- (c) Change of name from ABC limited to XYZ limited.

Change in Name clause of the Company involves alteration of Memorandum of Association (hereinafter referred to as "Memorandum") of the Company. Section 13 of Companies Act 2013 regulates the process of amendment in Memorandum of Association is applicable to all companies. All clauses of Memorandum except Capital clause can be altered by following the provisions of Section 13 of Companies Act, 2013 by passing special resolution.

Section 13 of the Companies Act, 2013 deal with change of name which says that the name of the company can be changed by a special resolution and with the approval of the Central Government. Approval of Central Government is not required if the change relates to the addition/deletion of the words "private" to the name.

Sub Section- 2 of Section 4 of the Companies Act, 2013 provides that no company shall be registered by name which:

Is identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law, or: [Section- 2 (a)]

will constitute an offence under any law for the time being in force, or: [Section- 2 (b)(i)]

is undesirable in the opinion of the Central Government. [Section- 2 (b)(ii)].

Sub Section-3 without prejudice (Effect) to the provisions of sub-section (2) [as given above], a company shall not be registered with a name which contains unless the previous approval of the Central Government has been obtained for the use of any such word or expression:

any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or [Section- 3 (a)].

Such word or expression, as may be prescribed. [Section- 3 (b)].

Alteration of Name shall not allow to following Companies:

The change of name shall not be allowed to a company:

- which has not filed annual returns or financial statements due for filing with the Registrar or
- which has failed to pay or repay matured deposits or debentures or interest thereon

Steps for alteration in memorandum of association:

STEP – I: Convey Board Meeting of Directors: (As per section 173 and SS-1)

Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.

Attach Agenda

Notes to Agenda

Draft Resolution

STEP – II: Held Board Meeting: (As per section 173 and SS-1)

Proposed new names for the company.

Pass Board Resolution after Selection of Names.

Authorize to Directors of Company to make Application with ROC for Name approval

STEP-III- File – e-form- RUN with ROC:

File form RUN with ROC for approval of name:

ATTACHMENTS:

- Copy of Board Resolution.
- Approval of Owner of Trade Mark or the applicant of such application

[If proposed name(s) are based on a registered Trade Mark or is a subject matter of an application pending for registration under the Trade Mark Act, 1999]

STEP-IV

Name Approval Certificate from ROC, if applied name are available

STEP- V: Issue Notice of General Meeting: (Section 101)

Notice of EGM shall be given at least 21 days before the actual date of EGM. EGM can be called on Shorter Notice with the consent of at least majority in number and ninety five percent of such part of the paid up share capital of the company giving a right to vote at such a meeting:

- All the Directors.
- Members
- Auditors of Company

The notice shall specify the place, date, day and time of the meeting and contain a statement on the business to be transacted at the EGM.

STEP- VI: Hold General Meeting: (Section 101)

- Check the Quorum.
- Check whether auditor is present, if not. Then Leave of absence is Granted or Not. (As per Section- 146).
- Pass Special Resolution.[Section-114(2)]
- Approval of Alteration in MOA.

STEP- VII: Filing of form with ROC: (Section 117)

A. File Form MGT-14 (Filing of Resolutions and agreements to the Registrar under section 117) with the Registrar along with the requisite filing within 30 days of passing the special resolution, along with given documents:-

The name once approved valid for 60 days from the date of making of application.

ATTACHMENTS:

- Certified True Copies of the Special Resolutions along with explanatory statement;
 - Copy of the Notice of meeting send to members along with all the annexure;
 - A printed copy of the Memorandum Article of Associations.
- B. File Form INC – 24 within 30 days of passing of Special Resolution

ATTACHMENTS:

- Notice along with Explanatory Statements.
- Certified True Copy of Special Resolution.
- Altered in MOA & AOA.
- Minutes of General Meeting

STEP- VIII: Issue of New Certificate:

After completing Above Procedure ROC will issue a New Certificate of Incorporation

EFFECT OF CHANGE OF NAME OF A COMPANY

1. Continue Existence of Company: The Companies Act, 2013 does not talk about effect of the change of name as this is well settled that change of name:

- Shall not affect any rights or obligations of the company;
- Shall not render defective any legal proceedings by or against the company; and
- Shall not affect any legal proceedings continued or commenced by or against the company pending in its old name; they may continue in its new name.

The Act recognizes the continued existence of a company which has changed its name. The effect of the issue of the certificate of incorporation on change of name is not to reform or re-incorporate the company as a new entity. When the section refers to the company changing its name, it recognizes the continued existence of the company notwithstanding the change. [*Economic Investment Corporation Ltd. v. CIT* (1970) 40 Comp Case 1 (Cal.)]

A change of name of a company does not result in its dissolution and incorporation of a new company under a new name. Section 13 permits a company to change its name in the manner as prescribed. Old case laws relating to earlier Acts may still valid regarding change of name of a company.

Sub-section (3) of section 13 states that where a company changes its name, the Registrar shall enter the new name on the register in the place of the old name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein and the change of name shall be complete and effective only on the issue of such a certificate. It would be observed that the emphasis is on the expression 'change of name'. (*Kalipada Sinha v. Mahalaxmi Bank Ltd.* AIR 1966 Cal 585)

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2. Right to sue: A change of name under section 13 does not affect the rights and obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings, which might have been continued or commenced by or against the company by its former name, may be continued by or against the company by its new name.

When a company is converted into a public company, apart from the change in its name, the constitution and the entity of the company is not affected in any other manner and the legal proceedings instituted by its former name can be continued by its new name. [Solvex Oils & Fertilizers v. Bhandari Cross-Fields (P) Ltd. (1978) 48 Com Cases 260 (P&H)]

The change of name does not affect the entity of the company or its continuity as the same entity. It remains for all practical purposes the same entity with same rights, privileges and liabilities as before. In case of change of name during the pendency of legal proceedings by or against the company, the question which arises before the court is whether the proceedings are initiated by an entity which is not in existence or by an entity in existence but only misdescribed in the plaint. [Pioneer Protective Glass Fibre P. Ltd. v. Fibre Glass Pilkington Ltd. (1986) 60 Com Cases 707 (Cal) (DB): (1985) 3 Comp LJ 309 (Cal)] If a company ceases to be in existence, the plaint is liable to be rejected [Shree Choudhary Cold Storage (1972) v. Ruby General Insurance Co. Ltd. AIR 1982 Cal 124], but if the company continued to exist, the cause title of the plaint suffers from misdescription, which could be corrected by amendment of the plaint [Patel Roadways (P) Ltd. v. Bata Shoe Co. (P) Ltd. 1979 (2) Cal HCN 279]

Nothing in Section 13 authorizes the company to commence a legal proceeding in its former name at a time when it had acquired its new name, which has been put on the register of companies. Therefore, after the change of name, the company is not authorised to sue in its old name [Malhati Tea Syndicate Ltd. v. Revenue Officer, Jalpaiguri (1973) 43 Com Cases 337 (Cal): AIR 1973 Cal 78].

The change of name does not bring into existence a new company. The company remains the same entity as before, only the name changes. A new certificate of incorporation has to be issued but that does not incorporate a new company.

3. Tax liability: There is no substitution or succession of one legal person by another legal person in the instant case. It is only a change in name. Even in the absence of any special provision in the Income-Tax Act, the change does not affect the liability of the company to pay income tax arrears. [Economic Investment Corporation Ltd. v. CIT (1970) 40 Com Cases (Cal) (DB)]

Assessment of tax against a private limited company is no valid explanation to contend after becoming public limited company, that the assessment is not valid. [Rajamoni Amma (N.) v. DCIT (1991) 2 Comp LJ 77 (Ker): (1991) 72 Com Cases 728]

4. Execution of decree: The object of the section is to provide that notwithstanding the change in the name, there is no alteration in the constitution or the legal status of the company. Even after the name of a company is altered by special resolution and sanction by the Registrar is accorded under this section the company continues to possess the same rights and is subject to the same obligations as before the change. Therefore, if a company has the power to execute a decree in its old name it has a right after the change to execute the decree in its new name. The fact that alteration in the name was not brought to the notice of the court would not in any manner render defective or irregular proceedings initiated by a company in its former name. A decree obtained by a company in its former name can be executed by it in the new name after it has obtained a certificate for the altered name. The change of the name does not affect the rights of the company. It is not necessary that the new name should have been entered in the decree. [Abdul Qayum (F S) v. Manindra Land & Building Corporation Ltd. (1955) 25 Com Cases 143 (All): AIR 1955 All 192]

5. Shareholding by company: The company which has changed its name would be entitled to ask those companies in which it is holding shares, to substitute its old certificates by new ones. [Sulphur Dyes Ltd. v. Hickson & Dadajee Ltd. (1995) 83 Com Cases 533 (Bom)]

2. CHANGE OF OBJECTS OF A COMPANY

A company may change its objects as enshrined in its memorandum of association in accordance with the provisions of Sections 13 of the Companies Act, 2013.

Under sub-section (1) of Section 13 of the Act, any alteration of memorandum with respect to the objects of the company is permitted through a Special Resolution. However, sub-section (8) of Section 13 restrict change in object of a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised unless a special resolution is passed by the company and the prescribed details of such resolution shall be published in one vernacular language and one English language newspaper in circulation at the place of the registered office of the company as well as on the website of the company indicating the justification for such change in object.

The dissenting shareholders shall be given an opportunity to exit from the company in accordance with the regulations specified by the Securities and Exchange Board of India.

The change in objects of the company shall be effective only on registration of special resolution. According to Rule 22(16)(a) of the Companies (Management and Administration) Rules, 2014, special resolution for alteration of object clause shall be passed only through postal ballot.

The company need to file with the ROC Form MGT-14 with a certified true copy of each special resolution passed at the general meeting along with the explanatory statement and altered copy of Memorandum of Association and Articles of Association and prescribed filing fee.

The Registrar shall register any alteration of Memorandum with respect to the objects of the company and certify the registration within a period of 30 days from the date of filing of the Special Resolution. No alteration shall have effect until it is registered.

PROCEDURE FOR CHANGING OBJECTS OF A COMPANY

In the light of the above provisions of Sections 13 of the Act, a company, desirous of altering the objects clause in its memorandum of association, is required to adopt the following procedure:

1. Issue notice in writing to every director of the company at his address registered with the company and the notice shall be sent by hand delivery, or by post or by electronic means as per the provisions of Section 173 (3) of the Companies Act 2013. The notice must be a seven day notice. The notice must contain time, date and venue for the meeting and detailed agenda of the business to be transacted thereat.
2. Hold the Board meeting at the appointed time, date and venue to –
 - (i) consider and to pass a resolution approving the proposed amendments to the objects clause of the memorandum of association of the company.
 - (ii) consider and to pass another resolution fixing time, date and venue for holding general meeting of the company for passing a special resolution under Section 13 of the Act for change of objects clause of the memorandum of association of the company.
 - (iii) approve notice of the general meeting and draft resolution with the explanatory statement to be annexed to the notice for the general meeting and to authorise the company secretary or some other competent officer to issue the notice on behalf of the Board.
3. Issue notice of the general meeting to all the members of the company, its directors and the auditors.
4. Send copies of the notice to each stock exchange where the securities of the company are listed within 24 hour of the occurrence of event [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]. A general notice of the general meeting may also be published in newspapers.
5. Hold the general meeting and pass the proposed special resolution. Company having members upto 200 are

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not required to transact any business through postal ballot.

6. Intimate stock exchange about alterations in memorandum and articles of the company within 24 hours of the occurrence of event. [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]
7. Send to each stock exchanges, a copy of the proceedings of the general meeting in case of a listed company within 24 hour of the occurrence of event [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].
8. File with the Registrar of Companies, Form MGT – 14 along with a copy of the special resolution passed by the company with a copy of the explanatory statement annexed to the notice of the meeting and the amended copy of memorandum of association attached to the e-form, within 30 days of passing of the resolution.
9. Obtain from the Registrar of Companies, certificate of registration of the alteration of the memorandum. Under MCA-21, the user may select “Get Certified Copy” and follow the procedure.
10. Amend each copy of the memorandum of association of the company available in the office or in the alternative fresh copies of memorandum of association be got printed.

ADDITIONAL REQUIREMENT – CHANGE OF OBJECTS FOR WHICH MONEY IS RAISED THROUGH PROSPECTUS

Rule 32 of Companies (Incorporation) Rules, 2014 contains the provisions for change of objects for which the money is raised through prospectus:

- (1) Where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not change the objects for which the money so raised is to be applied unless a special resolution is passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars, namely:-
 - (a) the total money received;
 - (b) the total money utilized for the objects stated in the prospectus;
 - (c) the unutilized amount out of the money so raised through prospectus,
 - (d) the particulars of the proposed alteration or change in the objects;
 - (e) the justification for the alteration or change in the objects;
 - (f) the amount proposed to be utilized for the new objects;
 - (g) the estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
 - (h) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution;
 - (i) the place from where any interested person may obtain a copy of the notice of resolution to be passed.
- (2) The advertisement giving details of each resolution to be passed for change in objects which shall be published simultaneously with the dispatch of postal ballot notices to shareholders.
- (3) The notice shall also be placed on the website of the company, if any.

3. CHANGE OF REGISTERED OFFICE OF A COMPANY

Section 12 of the Companies Act, 2013 lays down that every company shall within thirty days of its incorporation and at all times thereafter, to which all communications and notices may be addressed.

Lesson 2 □ □ Procedure for Alteration of Memorandum and Articles 47

Specified IFSC public and private company shall have its registered office at the International Financial Services Centre located in the approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006, where it is licensed to operate, at all times.

Every company within thirty days of its incorporation or any change in address of registered office shall furnish a verification of its registered office in INC 22 prescribed under Companies (Incorporation) Rules, 2014. However, in case of Specified IFSC public and private company, the company shall furnish to the Registrar verification of its registered office within a period of sixty days of its incorporation.

Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same. However, in case of Specified IFSC public and private company, the company shall furnish the notice to the Registrar within a period of sixty days of its incorporation.

Sub-section (5) of Section 12 lays down that except on the authority of a special resolution passed by the company, the registered office of the company shall not be changed outside the local limits of any city, town or village where such office is situated.

The Proviso to this sub-section lays down that in case of shifting of registered office from the jurisdiction of one registrar to another Registrar within same state unless such change is confirmed by the Regional Director on an application made in this behalf.

The Companies Act permits a company to change its registered office from its existing situation to another situation, –

- (i) within the local limits of the same city, town or village, or
- (ii) outside the local limits of the same city, town or village
 - (a) under the jurisdiction of the same Registrar of Companies or
 - (b) under the jurisdiction of another Registrar of Companies within the same State or
- (iii) from one state to another State.

The procedures for each of the above cases are given hereunder:

(i) Procedure for change of situation of registered office within the local limits of the city, town or village where it is presently situated.

A company desirous of changing the situation of its registered office within the local limits of the city, town or village where it is presently situated has to follow the following procedure:

1. Hold a meeting of its Board of directors of the company to take a decision by passing a resolution for shifting the registered office of the company to another place within local limits of city, town or village, where it is presently situated.
2. Within thirty days of the passing of the Board resolution, the company shall file with the concerned Registrar of Companies, Form INC – 22 along with a copy of the Board resolution. This Form contains verification by any one of practicing professionals – company secretary or chartered accountant or cost accountant (in whole-time practice). Further the company secretary or chartered accountant or cost accountant (in whole-time practice) has to personally visit the new registered office address or premises of the company and has to verify that the company actually exists at this address. In this context, he also has to certify that he has personally visited the new registered office address and is of the opinion that the premises are indeed at the disposal of the applicant company. Following documents have to be attached to Form INC – 22:

- Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement along with the rent receipts) etc.;
 - Copies of the utility bills as mentioned above (not older than two months);
 - A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/ Person (not taken on lease by company);
 - Copy of order of competent authority;
 - List of all the companies (specifying their CIN) having the same registered office address, if any;
3. Issue, if necessary, a general notice by way of an advertisement in newspaper(s) informing all members and other concerned persons, about the change of situation of the registered office of the company so that they may address all future communications to the company at its new address.
 4. Address of the new registered office of the company must also be incorporated on all items of stationery, sign boards and at all other places wherever it occurs.
 5. The stock exchanges, where the securities of the company are listed, should also be promptly informed about the change of the registered office of the company.

(ii) (a) Procedure for shifting of registered office outside the local limits of the city, town or village where it is presently situated within the same State under the jurisdiction of the same Registrar of Companies.

According to Sub-section (5) of Section 12 of the Companies Act, 2013, a company cannot, except on the authority of a special resolution passed in general meeting, shift its registered office outside the local limits of the city, town or village where it is presently situated.

However, in case of Specified IFSC public and private company, except on the authority of a resolution passed by the Board of Directors, the registered office of the Specified IFSC public and private company shall not be changed from one place to another within the International Financial Services Centre, but they shall not change the place of its registered office to any other place outside the said International Financial Services Centre.

Accordingly, a company desirous of shifting its registered office outside the local limits of the city, town or village where it is presently situated is required to take the following procedural steps:

1. Hold a Board meeting –
 - (i) to pass a resolution, for shifting the registered office of the company to another place outside the local limits of city, town or village, where it is presently situated;
 - (ii) to pass a resolution for fixing time, date and venue for holding general meeting of the company for passing a special resolution pursuant to Sub-section (5) of Section 12 of the Companies Act, 2013. Company having members upto 200 are not required to transact any business through postal ballot.
 - (iii) to pass a resolution approving notice of the general meeting along with the explanatory statement which is required to be annexed to the notice of the meeting as per requirement of Section 117 of the Companies Act.
 - (iv) to pass a resolution authorising the Company Secretary/Director to issue the notice of the general meeting on behalf of the Board of directors of the company.
2. Issue notice along with the explanatory statement of the general meeting to each member, each director and the auditors of the company.
3. The listed entity shall intimate the stock exchange within 24 hours of the occurrence of the event where the securities of the company are listed [Refer regulation 30(6) of SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015].

Lesson 2 ■ ■ Procedure for Alteration of Memorandum and Articles 49

4. If necessary, public notice of the general meeting may also be published in news papers.
5. Hold the general meeting and pass the special resolution as per notice of the general meeting.
6. Send to each stock exchange, a copy of the proceedings of the general meeting in case of a listed company within 24 hours of the occurrence of the event [Refer regulation 30(6) of SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015].
7. File with ROC within thirty days of passing of the special resolution-
 - (a) Form MGT – 14 along with a certified true copy of the special resolution passed at the general meeting and the explanatory statement annexed to the notice of the general meeting along with the prescribed filing fee.
 - (b) Form INC – 22, containing notice of change of registered office, along with the filing fee and copy of the special resolution.

This Form contains a verification by any one of these professionals - company secretary or chartered accountant or cost accountant (in whole-time practice). Further the company secretary or chartered accountant or cost accountant (in whole-time practice) has to personally visit the new registered office address or premises of the company and has to verify that the company actually exists at this address. In this context, he also has to certify that he has personally visited the new registered office address and is of the opinion that the premises are indeed at the disposal of the applicant company.

Both the forms Form No. MGT 14 and Form No. INC 22 require the certification by any practicing professional i.e., any whole-time practicing CA, CS or CWA.

Following documents have to be attached to Form INC – 22:

- Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement along with the rent receipts) etc.;
 - Copies of the utility bills as mentioned above (not older than two months);
 - A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/ Person (not taken on lease by company);
 - Copy of order of competent authority;
 - List of all the companies (specifying their CIN) having the same registered office address, if any;
8. Issue a public notice by an advertisement in newspaper(s) informing all the members of the company, other concerned persons about the change of registered office of the company so that they may address all future communications to the company at its new address.
 9. Change address of the registered office of the company on all items of stationery, sign boards and at all other places wherever it occurs.
 10. Inform the stock exchanges, where the securities of the company are listed, about the change of registered office of the company.
 11. Get the new address of the registered office of the company painted on all the sign boards wherever they are displayed.
 12. Write new address of the registered office of the company on all records, registers including the register of members, share certificates, sign boards, name plates etc.

(ii) (b) Procedure for shifting of registered office outside the local limits of the city, town or village where it is presently situated to the jurisdiction of another Registrar of Companies but within the same State.

According to Proviso to sub – section (5) of Section 12, a company cannot change the place of its registered

office from one place to another from the jurisdiction of one Registrar to another within the same State wherein more than one Registrar of Companies have jurisdiction, unless such change is confirmed by the concerned Regional Director.

Hence, a company, which needs to change its registered office within the same State but under the jurisdiction of another Registrar of Companies, shall have to take the following procedural steps in addition to the steps 1 to 12, specified in the immediately preceding para i.e. (ii) (a) here of –

1. Not less than one month before filing any application with Regional Director, the company shall publish a notice in a newspaper of local language and also in a English language;
2. Serve individual notices on each debenture holder, depositor and creditor of the company;
3. After special resolution passed for shifting of registered office from the jurisdiction of one Registrar to another Registrar within same state, the company should make application to the Regional Director in the prescribed Form INC – 23.

The attachments prescribed alongwith Form INC – 23 are:

- Board Resolution for shifting of registered office;
- Special Resolution of the members of the company approving the shifting of registered office;
- A declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;
- A declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;
- Acknowledged copy of intimation to the Chief Secretary of the state as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting.
- Copy of notice of the general meeting along with relevant explanatory statement
- Copy of the minutes of the general meeting authorizing such alteration
- Proof of service of the application to the Registrar, Chief secretary of the state , SEBI or any other regulatory authority, (if applicable);
- Copy of objections (if received any)
- Optional attachment(s), if any

4. The confirmation by Regional Director shall be communicated within a period of 30 days from the date of receipt of application by the Regional Director. The company shall file the confirmation with the Registrar within a period of 60 days of the date of confirmation. The Registrar shall register and certify the registration within a period of 30 days from the date of filing of such confirmation.

The shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated or any prosecution is pending against the company.

(iii) Procedure for changing the situation of registered office outside the State in which it is presently situated.

Section 13 lays down that a company may, by special resolution, alter the provisions of its memorandum so as to change the place of its registered office from one State to another. The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall take effect only when it is confirmed by the Central Government on petition.

The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.[Section 13(5)]

Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

A company proposing to shift its registered office from the State where it is presently situated to another State has to follow the following procedure:

1. Hold a Board meeting –
 - (i) to decide about the proposal to shift the registered office of the company to another State.
 - (ii) to fix time, date and venue for holding general meeting of the company for passing a special resolution for altering the memorandum of association of the company so as to change the situation of its registered office of the company to another State, subject to confirmation by the Central Government and also for authorising the company secretary to make a petition under Sub-section (7) of Section 13 of the Act to the Central Government seeking confirmation of the alteration of the memorandum of association of the company.
 - (iii) to approve notice of the general meeting along with the explanatory statement which is to be annexed to the notice of the meeting; and
 - (iv) to authorise the Company Secretary/Director to issue notice of the general meeting on behalf of the Board of directors of the company.
2. Issue notice (along with the explanatory statement) of the general meeting to all members, directors and the auditors of the company.
3. The listed entity shall intimate the stock exchange within 24 hours of the occurrence of the event where the securities of the company are listed [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].
4. A general notice of the general meeting may also be published in newspapers.
5. Hold the general meeting and pass the special resolution for altering the memorandum of association of the company so as to change the situation of its registered office to another State, as per notice of the general meeting. Company having members upto 200 are not required to transact any business through postal ballot.
6. Send to each stock exchange, a copy of, proceedings of the general meeting within 24 hours of the occurrence of event as required by the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
7. Intimate stock exchange about alterations in memorandum and articles of the company within 24 hrs

of the occurrence of event. [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]

8. File with the ROC within thirty days of passing of the resolution, Form MGT-14 along with a certified true copy of the special resolution passed at the general meeting along with the explanatory statement annexed to the notice of the general meeting and the prescribed filing fee.
- (9) As per Rule 30 of the Companies (Incorporation) Rules, 2014, application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one state Government or Union territory to another, shall be filed with the Central Government in **Form No. INC. 23** along with the fee and shall be accompanied by the following documents:-
 - (a) a copy of Memorandum of Association, with proposed alterations;
 - (b) a copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;
 - (c) a copy of Board Resolution or Power of Attorney or the executed Vakalatnama, as the case may be.
- (10) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-
 - (a) the names and address of every creditor and debenture holder of the company;
 - (b) the nature and respective amounts due to them in respect of debts, claims or liabilities:
- (11) The list of creditors and debenture holders, accompanied by declaration signed by the company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that
 - (i) they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and
 - (ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.
- (12) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.
- (13) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

(14) The company shall, not more than thirty days before the date of filing the application in Form No. INC.23 –

(a) advertise in the **Form No. INC. 26** in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with the widest circulation in the State in which the registered office of the company is situated:

A copy of advertisement shall be served on the Central Government immediately on its publication.

(b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

(15) There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule [5].

(16) Where no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.

(17) Where an objection has been received,

(i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.

(ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.

(18) The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper.

(19) The shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

(20) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.

II. ALTERATION OF ARTICLES OF ASSOCIATION OF A COMPANY

Section 14 of the Companies Act, 2013 lays down that subject to the provisions of the Act and to the conditions contained in its memorandum, a company may, by a special resolution, alter its articles.

Every alteration of articles shall be filed with the Registrar together with a printed copy of the altered articles within a period of fifteen days. [Section 14(2)]

Any alteration of the articles so registered, shall be valid as if it were originally in the articles. A company may alter its articles in accordance with the above provisions in any of the manners mentioned below:

- (i) by adoption of new set of articles;
- (ii) by addition/insertion of a new article;
- (iii) by deletion of an article;
- (iv) by amendment of a specific article; or
- (v) by substitution of a specific article.

Any alteration having the effect of conversion of public company into a private company shall not take effect except with the approval of the Tribunal. (Procedure is discussed in Chapter 1)

Procedure for Altering Articles of Association

A company which proposes to alter its articles of association has to follow the procedure detailed below:

1. Convene and hold a Board meeting to –
 - (i) Consider and decide which of the articles are to be altered and pass a formal resolution in this respect.
 - (ii) Fix time, date and venue for holding a general meeting of the company for passing a special resolution as required by Section 14 of the Companies Act, 2013.
 - (iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per 102 of the Act.
 - (iv) Authorize the Company Secretary or any other competent officer of the company to issue notice of the general meeting as approved by the Board.
2. On the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed alteration of the articles of association of the company.
3. Issue notice of the general meeting along with the explanatory statement, to all the members, directors and the auditor of the company.

Also intimate the concerned stock exchanges as per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

4. Hold the general meeting and have the special resolution passed.

Note: If the company is a listed company and the alteration of articles of association relates to insertion of the provisions defining a private company then ensure that the Special Resolution as aforesaid is passed only through postal ballot.
5. Forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
6. File with the ROC, Form MGT – 14 along with a certified copy of the special resolution and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and a copy of the Articles of Association, within fifteen days of the passing of the resolution along with the prescribed filing fee.
7. Make necessary changes in all the copies of the articles of association of the company lying in the office of the company.

EFFECT OF ALTERATION OF ARTICLES

Articles cannot be altered, if the alteration is repugnant to, or inconsistent with, any statute or general law or it is such as to defeat the provisions of any law. The articles cannot be altered to enable a company to carry on an illegal scheme (lottery business). (*Pioneer Mutual Benefit Society v. Asst. Registrar*, (1933) 3 Com Cases 37, 40 : AIR 1933 Mad 129.

All members become bound by a valid alteration whether they voted for or against it (*Hari Chandana Yoga Deva v. Hindustan Co-op. Insurance Society Ltd.*, AIR 1925 Cal 690. A provision of the Articles which has the effect of limiting the company's share capital to a fixed amount would have no effect being contrary to the Act. [*Muheer Hemant Mafatlal v. Mafatlal Industries Ltd.*, (1987) 89 Bom LR 86 (Bom).

Stringent provisions can be made in the Articles so long as they are not contrary to the provisions of the Act. Where the Act provides for an ordinary resolution for transacting a particular business, the articles may provide for a special resolution. Likewise, a public company which is required to give 21 days' notice for a general meeting may provide in its articles to give 30 days' notice. Such a public company cannot, however provide for giving less than 21 days' notice.

In *Tapas Sinha Roy v. Linkman Services P. Ltd.*, (2007) 77 CLA 340 (CLB) it was held that the power of alteration can be exercised only in good faith in the interests of the company as a whole. A discriminatory amendment depriving some members of their rights qua members would be struck down as invalid. The articles were altered in this case to enable the company to forfeit fully paid shares.

ANNEXURE

SPECIMEN BOARD RESOLUTION FOR CHANGE OF NAME

RESOLVED THAT subject to the approval by the Company by a special resolution to be passed at a general meeting and of the Central Government under section 13 of the Companies Act, 2013, the name of the Company be and is hereby changed from '..... Ltd.' to any of the following names in the order of preference:

- (i) '..... Ltd.'
- (ii) '..... Ltd.'
- (iii) '.....Ltd.'
- (iv) '.....Ltd.'
- (v) '.....Ltd.'
- (vi) '.....Ltd.'

or such other name as may be allowed by the Registrar, Central Registration Centre.

RESOLVED FURTHER THAT the Company Secretary be and is hereby authorised to make the application in FORM INC 1 to the Registrar of Companies for ascertaining the availability of the proposed name(s) and an application for approval for the change of name as above and to do such other acts, things and deeds as may be necessary to do to give effect to this resolution.

SPECIMEN OF THE SPECIAL RESOLUTION FOR CHANGE OF NAME OF THE COMPANY

"RESOLVED THAT subject to the approval of the Central Government, pursuant to the proviso to Section 13 of the Companies Act, 2013, as a consequence of the conversion of the company from a private limited company into a public limited company, the name of the company be and is hereby changed from "..... Private Limited" to "..... Limited"; and

RESOLVED FURTHER THAT clause I (name clause) in the memorandum of association of the company be and is hereby altered by substituting the same with the following:

- I. The name of the company isLimited."

Explanatory Statement

The Board of directors of the company had, at its meeting held on, resolved that consequent upon conversion of the company from private limited company to public limited company, the name of the company be changed from "..... Private Limited" to "..... Limited" and accordingly clause I (name clause) in the memorandum of association of the company is to be altered by substituting the same with a clause as set out in the notice for approval of the shareholders of the company.

No director is concerned or interested in the proposed resolution.

Note: The above special resolution is a composite one for change of name of the company and also for change of name clause in the memorandum of association of the company. Alternatively, the company may pass two separate special resolutions viz., (i) for change of name of the company and (ii) for change of clause I (name clause) in the memorandum of association of the company. In such a case part (ii) of the resolution need not be incorporated in the above resolution and in addition the following special resolution (Annexure II) may also be passed.

**SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING THE MEMORANDUM OF ASSOCIATION
(NAME CLAUSE) OF THE COMPANY**

“RESOLVED THAT pursuant to Section 13 of the Companies Act, 2013, and consequent upon conversion of the company from a private limited company into a public limited company, clause I (name clause) of the memorandum of association of the company be and is hereby altered by substituting the same with the following:

“Clause I. The name of the company is Limited.”

Explanatory Statement

The Board of directors of the company had, at its meeting held on, resolved that consequent upon conversion of the company from private limited company to public limited company, the name of the company be changed from “..... Private Limited” to “..... Limited” and accordingly clause I (name clause) in the memorandum of association of the company is to be altered by substituting the same with new clause I as set out in the notice.

Hence, the proposed special resolution is commended for approval by the members. No director is concerned or interested in the proposed resolution.

**SPECIMEN OF THE BOARD RESOLUTION FOR ALTERING THE MEMORANDUM OF ASSOCIATION
(OBJECT CLAUSE) OF THE COMPANY**

“RESOLVED THAT subject to the approval of the company, by a special resolution at a general meeting and such other statutory approvals as may be necessary, the object clause of the memorandum of the company, be and is hereby altered by inserting new clauses in place of clause.....

(I)

(II)

RESOLVED FURTHER THAT a special resolution according approval to the proposed alterations by the members of the company be and is hereby proposed at the _____ annual general meeting/extraordinary general meeting to be convened and held on ____ at ____ at the registered office of the company and the Company Secretary be and is authorized to issue notice of the said meeting together with the related explanatory statement, in accordance with the draft placed before this meeting (as initialed by the Chairman), in accordance with the provisions of Companies Act, 2013, and the articles of association of the company”.

**SPECIAL RESOLUTION FOR AMENDING THE OBJECTS CLAUSE OF THE MEMORANDUM OF
ASSOCIATION**

“RESOLVED THAT pursuant to the provisions of Section 13 of the Companies Act, 2013, Clause III being the objects clause of the Memorandum of Association of the company be and is hereby altered as follows :

(i) To substitute the following sub-clause in place of the existing sub-clause (h):

(h) to borrow or raise money or to invite, receive or accept money on deposit for the purposes of the company (not amounting to the business of banking as defined under the Banking Regulation Act, 1949) in such manner and upon such terms and conditions as may seem expedient and to secure or arrange the repayment thereof by the company and create, issue and allot redeemable or irredeemable bonds, mortgages or other instruments, mortgage debentures, secured or unsecured debentures issuable or payable either at par or at premium or discount or as partly or fully paid and for any such purposes to charge all or any part of the property and profits of the company both present and future including its uncalled capital.

(ii) The following new sub-clauses be and are hereby added after the sub-clause 3(de):

(df) to carry on the business of manufacturers and processors of and dealers in paper, pulp and boards of

all kinds and articles made from paper, pulp and boards of every description and materials or chemicals or agents used in the manufacture or treatment of paper and board including card boards and their by-products.

- (dg) To carry on the business of manufacturers, installers, maintainers and repairers of and dealers in mechanical, electrical and electronic audio visual appliances, and apparatus of every description and of in radio, television, telecommunication requisites and suppliers of dynamos, accumulators, lamps and all apparatus now known or that may be invented in connection with the generation, accumulation, distribution and supply and employment of electricity including all cables, wires and appliances and glasses, cells, integrated circuits, electric posts, autometers, and other electrical and electronics apparatus and appliances and stores of all kinds.
 - (dh) To manufacture, sell, distribute, deal or trade in electrical and mechanical goods, equipments, accessories, components spares of all kinds, mechanical devices, wagons, tanks, galvanised iron pipes, conduit pipes.
 - (di) To carry on the business of and act as merchants, traders, commission and mercantile agents, clearing agents, shipping agents whether within or outside the territory of the Union of India and to import, export, buy, sell, barter, exchange, pledge, make advance upon or otherwise deal in goods, produce, articles and merchandise including capital and consumable goods.
 - (dj) To carry on the business of and as general electrical and mechanical engineers, founders, fabricators, manufacturers and dealers in iron, steel and alloys, engineering, mechanical and electrical apparatus and goods plants and machineries and equipments of various kinds and the manufacture, sale or hire of apparatus and goods, to which the application of electricity or any other power is or may be useful, convenient, ornamental or otherwise necessary.
 - (dk) To manufacture, produce, use, buy and sell and otherwise deal or trade in any and all metallurgical, electro chemical and electro thermal products in elemental, alloy or composite forms and all or any formulate compositions, consisting or partly consisting of the foregoing or any of them and all or any converted or fabricated products and articles of the foregoing or any of them.
 - (dl) To carry on the business as manufacturers and dealers of different kinds of cement, portland cement, cement products and building materials.
 - (dm) To carry on the business of financial and investment consultants, agents, underwriters and to render financial and management services.
- (iii) The following sub-clauses be and are hereby added after the existing sub-clause m(iii):
- m(iv) To sub-let all or any contracts from time to time and upon such terms and conditions as may be thought expedient.
 - m(v) To establish, provide, maintain or conduct otherwise schools, colleges, research laboratories, technical management and cultural institutions and experimental workshops for scientific and technical research and development and undertake experiments and carry on scientific and technical researches, experiments and tests of kinds, to promote studies and researches, scientific and technical investigations and innovations and developments by providing, sponsoring, subsidising or assisting laboratories, workshops, libraries, lecture meetings, seminars and conferences and by providing or contributing to the remuneration of scientific or technical professors, experts or otherwise qualified and competent persons and by providing or contributing to the award of scholarships, prizes, grants to students or otherwise and generally encourage, promote and reward studies, researches, investigations, experiments, tests and inventions of any kind that may be considered likely to assist any business which the company is authorised to carry on.

- m(vi) To insure any of the properties, undertakings, contracts, guarantees or obligations of the company of every nature and kind in any manner whatsoever.
- m(vii) To promote, carry on, maintain and develop, trade of all kinds, industrial and financial relations of every kind and description in all matters with the objects of the company.
- m(viii) To subscribe, contribute, pay, transfer or guarantee money for or to dedicate, donate, present or otherwise dispose of either voluntarily or for value, any moneys or properties of the company to or for the benefit of any public, local, general or useful objects, purposes or institutions or for any exhibition or for any purpose which may be considered likely directly or indirectly to further the objects of the company or the interests of its members.
- m(ix) To carry on any other trade, business, or undertaking which it may seem to the company capable of being conveniently carried on in connection with any of the company's objects or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights or which it may be advisable to undertake with a view to improving, developing, rendering valuable or turning to account any property movable or immovable belonging to the company or in which the company may be interested.
- m(x) To subscribe for, underwrite, purchase or otherwise acquire, and to hold, dispose of and deal with the shares, stocks, securities and evidences of indebtedness or of the rights to participate in profits, assets or other similar documents issued or to be issued by any Government authority, corporation or body, or by any other company and any option or rights in respect thereof.
- m(xi) To acquire debentures, debenture stock bonds, obligations or securities by original subscription, participation in syndicates, tender, purchase, exchange or otherwise and to subscribe for the same either conditionally or otherwise and to guarantee the subscription thereof and to exercise, enforce all rights and powers conferred by or incident to the ownership thereof."

Explanatory Statement

Your Board has to consider from time to time proposals for diversification into areas which would be profitable for the company as part of diversification plans. For the purpose of the objects clause of the company which is presently very restricted in scope, requires to be so made out as to cover a wide range of activities to enable your company to consider embarking upon new projects and activities considered to be convenient, advantageous and feasible for the company's business. Certain incidental powers are also being added for the convenience of the Company's operations. Your Directors recommend that the special resolution be passed.

None of the Directors of the Company is interested or concerned in the said resolution except as members of the Company.

SPECIMEN OF BOARD RESOLUTION FOR SHIFTING THE REGISTERED OFFICE OF THE COMPANY TO ANOTHER PLACE WITHIN LOCAL LIMITS

RESOLVED THAT "the registered office of the company be and is hereby shifted from its present location at to, under the jurisdiction of police station and within the local limit of the town where present registered office of the company is situated;

RESOLVED FURTHER THAT – The Company Secretary, Sh. be and is hereby authorized to file with the Registrar of Companies, FORM INC 22 containing verification of the situation of the registered office of the company."

**SPECIMEN OF BOARD RESOLUTION APPROVING NOTICE OF THE
EXTRAORDINARY GENERAL MEETING**

RESOLVED THAT the notice of the extra ordinary general meeting to be held at (time) (date) for passing the special resolution as required under Section 12 (5) of the Companies Act, 2013 for shifting of registered office from present situation at to a place falling under the jurisdiction of police station and outside the local limits of the town where registered office of the company is presently situated, a draft whereof was placed before the meeting and was initialed by the chairperson of the meeting for the purpose of identification, be and is hereby approved”

**SPECIMEN OF BOARD RESOLUTION AUTHORISING THE COMPANY SECRETARY TO ISSUE NOTICE OF
THE EXTRAORDINARY GENERAL MEETING**

“RESOLVED THAT Sh. the company secretary of the company be and is hereby authorized to issue on behalf of the Board of directors of the company, the notice under Section 101 and the explanatory statement thereof under Section 102 of the Companies Act, 2013, as approved by the Board, the Extra-ordinary General Meeting of the company to be held at hrs in (date) for passing the special resolution under Section 12(5) of the Act, for shifting the registered office of the company.”

**SPECIMEN OF SPECIAL RESOLUTION FOR SHIFTING THE REGISTERED OFFICE OF THE COMPANY TO
ANOTHER PLACE OUTSIDE THE LOCAL LIMITS BUT WITHIN THE SAME STATE**

RESOLVED THAT pursuant to the section 12(5) and other applicable provisions of the Companies Act, 2013, if any, the registered office of the Company be and is hereby shifted from its present situation at to a place falling under the jurisdiction of police station which is outside the local limit of the town where it is presently situated but within the same state;

RESOLVED FURTHER THAT – Shri the company Secretary, be is hereby authorised to file with the concern Registrar of Companies, the FORM INC 22 containing verification of the registered office of the company.

Explanatory Statement:

The registered office of the company is situated at (a small town)..... Often it becomes difficult to arrange the required facilities for holding the company’s annual general meetings, which are required to be held at the registered office of the Company or at a place within the local limits of the same town. Therefore, the Board of directors of the company, at its meeting held on, resolved that the registered office of the company is to be shifted to, a place outside the local limits of the town where the company’s registered office is presently situated but which is within the same State, where it would be possible for the company to hold its annual general meetings more conveniently as all the required facilities are available there. Moreover, the company’s Central, Administrative and Marketing Offices are already situated there.

The Board, therefore, recommends the proposed special resolution to the members of the company for their consideration and approval.

None of the directors of the company is concerned or interested in the proposed resolution.

**SPECIMEN RESOLUTION FOR CHANGE OF REGISTERED OFFICE OUTSIDE LOCAL LIMITS
OF CITY, TOWN OR VILLAGE FROM THE JURISDICTION OF ONE REGISTRAR TO ANOTHER
WITHIN THE SAME STATE**

“RESOLVED THAT the Registered Office of the Company be and is hereby shifted from..... to..... which is outside the local limits of city, town or village but from the jurisdiction of one registrar to another within the same

state where the company's registered office is presently situated with effect from subject to confirmation by the Regional Director.”

Explanatory Statement

The registered office of the company is situated at..... while the administrative office is situated at

For administrative convenience and better control over the operations it is proposed to shift the Registered office from..... to Since the new place is within the jurisdiction of another Registrar of Companies, this requires prior approval of the Regional Director. Hence it is proposed to pass a special resolution for this purpose. No Director is interested or concerned in this resolution.

SPECIMEN OF BOARD RESOLUTION FOR SHIFTING THE REGISTERED OFFICE FROM ONE STATE TO ANOTHER

“RESOLVED THAT subject to the approval of members of the Company by a special resolution at a general meeting and confirmation of the Regional Director under section 12 of the Companies Act, 2013 and subject to such other approvals as may be necessary, the registered office of the Company be and is hereby shifted from its present location to the State/Union Territory of and clause of the memorandum of the company be and is hereby altered accordingly;

“RESOLVED FURTHER THAT a special resolution according approval to the proposed alterations by the members of the Company be and is hereby proposed at the annual general meeting/extra-ordinary general meeting to be convened and held on at at the registered office of the company and the Company Secretary be and is hereby authorised to issue notice of the said meeting together with related explanatory statement, in accordance with the draft placed before this meeting, to the members of the company in accordance with the provisions of Companies Act, 1956 and the articles of association of the company;

“RESOLVED FURTHER THAT M/s..... Advocate/Secretary in whole-time practice/practising Chartered Accountant/practising Cost Accountant be and is hereby authorised to appear and represent the Company before the Regional Director, in the matter of the petition to be filed for their confirmation to the proposed alteration of the of the memorandum as to the change of the place of the registered office from one State to another and are also authorised to make such statements, furnish such information and do such acts, deeds and things as may be necessary in relation to the said petition;

“RESOLVED FURTHER THAT Mr. director, Mr., director, and Mr., secretary, be and are hereby authorised jointly and severally to sign the said petition/application, affidavits and such other documents as may be necessary in relation to the said petition.

SPECIMEN OF SPECIAL RESOLUTION FOR ALTERING THE MEMORANDUM OF THE COMPANY SO AS TO CHANGE THE SITUATION OF ITS REGISTERED OFFICE TO ANOTHER STATE

“RESOLVED THAT pursuant to Section 13 and other applicable provisions, if any, of the Companies Act, 2013 and subject to confirmation by the Regional Director, as prescribed in Sub-section (4) of the said section, the memorandum of association of the company be altered so as to change the place of the company's registered office from its present situation at.....in the State of Maharashtra to, a place in the State of Gujarat, by substituting the words “in the State of Maharashtra” for the words “in the State of Gujarat” in Clause II of the memorandum of association of the company.”

“RESOLVED FURTHER THAT Shri, the Company Secretary, be and is hereby authorised –

- (i) to sign and file, the petition under Sub-section (4) of Section 13 of the Act to the Regional Director for securing confirmation to the alteration to the memorandum of association of the company so as to

change the place of the Registered office of the company from the State of Maharashtra to the State of Gujarat;

- (ii) to represent the company in all hearings concerning the petition of the company; and
- (iii) to appoint, on behalf of the company, Company Secretaries in whole-time practice, advocates, lawyers, counsels and other consultants, if and when required, to represent the company and plead on its behalf before the concerned Regional Director and or any other agency in all matters connected with the petition of the company.

Explanatory Statement

When the company was incorporated it was decided that the main manufacturing unit of the company would be located in the State of Maharashtra and in the memorandum of association it was stated that the registered office of the company would be situated in that State.

Subsequently it was found that the location of the main manufacturing unit in the State of Gujarat would be more advantageous to the company. At present, all the factories of the company are located in the State of Gujarat. For better management and control, the Head Office of the company has already been shifted to Ahmedabad.

No useful purpose would be served by continuing to keep the company's registered office in the State of Maharashtra. Moreover, 90% of the members of the company have their registered addresses in the State of Gujarat. The directors, therefore, consider that the memorandum of association of the company should be altered so as to change the place of its registered office from its present situation at..... in the State of Maharashtra toa place situated in the State of Gujarat.

After the proposal is approved by the shareholders, a petition is required to be made, under Section 13(4) of the Companies Act, 2013, to the Regional Director for confirmation of the alteration to the memorandum of association of the company so as to shift the company's registered office from the State of Maharashtra to the State of Gujarat. It is also proposed to authorize Mr. Company Secretary of the company to sign and file the petition and appear before the Regional Director in connection with the petition. An enabling clause has also been provided authorizing the Company Secretary to appoint any other authorized representative, as he considers necessary in connection with the petition.

The Board recommends the resolution to the members for their consideration and approval.

None of the directors of the company is concerned or interested in the proposed resolution.

SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING THE ARTICLES OF ASSOCIATION OF A COMPANY BY ADOPTION OF NEW SET OF ARTICLES

“RESOLVED THAT the Article of Association of the Company by and are hereby replaced by the adoption of new set of articles as provided in Tables F, G, H, I & J in Schedule I as the case may be of the Companies Act, 2013.

Explanatory Statement

The present Articles of Association of the company were adopted in The Act has since been amended several times. Moreover certain other Acts have affected various provisions of the Companies Act, 2013.

The directors of the company believe that it is desirable that the articles of association of the company be revised so that they fully reflect not only the law governing the company and rules and regulations made thereunder, but is also in conformity with modern secretarial practices and complies with the requirements of the listing agreements of the stock exchanges on which the company's shares are listed.

Since the proposed alterations, deletions, insertions etc. to the present articles of association are numerous, it is more convenient to adopt an altogether new set of articles of association incorporating all the proposed alterations.

Your directors commend the proposed resolution for your consideration and adoption of the new set of Articles of Association of the company to replace the existing Articles of Association of the company.

A copy of the existing Articles of Association is available at the registered office of the company for the inspection of any member, if he so desire, between Monday to Friday between 2 P.M. and 5 P.M.

None of the directors is interested in the proposed resolution.

**SPECIMEN OF SPECIAL RESOLUTION FOR ALTERATION OF ARTICLES
BY ADDITION/INSERTION OF A NEW ARTICLE**

“RESOLVED THAT the Articles of Association of the company be and are hereby altered by inserting at the end of article of the Articles of Association of the company, the following:

“Notwithstanding anything contained in these articles, the managing directors and whole-time directors of the company shall not be required to hold any such qualification shares.”

Explanatory Statement

Article of the company’s articles of association provides that the qualification of a director shall be the holding of equity shares in the company of the aggregate nominal value of ‘..... The managing directors/whole-time directors are, pursuant to article not normally liable to retire by rotation.

However, if at any time, the number of directors (including the managing/whole-time directors) as are not subject to retirement by rotation shall exceed one-third of the total number of directors for the time being, then it is provided by article that such directors are liable to retire by rotation to comply with the provisions of Section 152 of the Companies Act, 2013. As it is not contemplated that in such circumstances, the managing directors/whole-time directors should be required to hold qualification shares, it is proposed to make it clear beyond doubt that the managing directors/whole-time directors shall not be required to hold qualification shares.

A copy of the existing articles together with the proposed alteration is available for inspection at the registered office of the company during the business hours on any working day.

None of the directors is concerned or interested in the proposed resolution save and except to the extent of qualification shares required or not required by them to be held in the company.

SPECIMEN OF SPECIAL RESOLUTION FOR ALTERATION OF ARTICLES BY DELETION OF AN ARTICLE

RESOLVED THAT Articles of Association of the Company be and are hereby altered by deleting article of the articles of association of the company.

RESOLVED FURTHER THAT after deletion, the existing Articles No. to be renumbered as Article No. to

Explanatory Statement

Articles of the articles of association of the company related to the appointment of managing agent. Under the present law, no company shall appoint managing agents/secretaries. This article has remained in the articles of association of the company in spite of the fact that it became redundant since long. The directors have now thought it fit to forthwith delete this article which is no longer in conformity with the provisions of the Companies Act, 2013.

A copy of the existing articles together with the proposed alteration is available for inspection at the registered office of the company during the business hours on any working day.

None of the directors is concerned or interested in the proposed resolution.

**SPECIMEN OF SPECIAL RESOLUTION FOR ALTERATION OF
ARTICLES BY AMENDMENT OF A SPECIFIC ARTICLE**

“RESOLVED THAT the Articles of Association of the company be and are hereby altered by replacing Article No.13 of the Articles of Association of the company.

Explanatory Statement

The existing article 13 makes mention of Section 113 of the Companies Act, 1956 only. Subsequent to the enactment of the Companies Act 2013, the Central Government framed the Companies (Share Capital and Debentures) Rules 2014 and the SEBI (LODR) Regulations, 2015 of the stock exchanges also contain obligatory provisions regarding the issue of share certificates by companies. Your directors have, therefore, resolved that alteration of the articles be effected by clarifying that the issue of share certificates shall be in compliance with the Companies (Share Capital and Debentures) Rules, 2014 and the provisions of the SEBI (LODR) Regulations, 2015 of the stock exchanges. Accordingly, the proposed alteration is being placed before the company in general meeting for approval.

Existing article

“13. Share certificates:

“The certificate of title to shares and duplicate thereof when necessary shall be issued under the Seal of the company, subject to the provisions of Section 113 of the Act”

Proposed alteration

“The certificate of shares and the duplicate thereof shall be issued under the common seal of the company, subject to section 46 and Companies (Share Capital and Debentures) Rules, 2014.”

A copy of the existing articles of association of the company together with the proposed alteration is available for inspection of the members of the company at the company’s registered office, on any working day during business hours.

None of the directors of the company is concerned or interested in the proposed resolution.

LESSON ROUND UP

- Section 13 of the act lays down the manner in which different clauses of the memorandum can be altered by passing a special resolution and after complying with the procedure specified in this section.
- The application for change of name shall be filed in Form INC 24, and for change of registered office from one state or union territory to another, shall be filed with the Central Government in Form INC 23.
- The registrar shall register any alteration in memorandum with respect to objects of the company and certify the registration within a period of 30 days from the date of filing the Special Resolution.
- Section 14 lays down the procedure for alteration of articles. A company may alter its articles including alterations having effect of conversion of a private company into a public company or a public company into a private company with the approval of members through a special resolution.
- If a private company alters its articles in such a manner where they no longer include the restrictions and limitations which are required to be included in the articles of a private company, the company shall cease to be a private company from the date of such change.
- Every alteration in the memorandum or articles of the company shall be noted in every copy of the memorandum or articles.

Lesson 3

Issue and Allotment of Securities

LESSON OUTLINE

- Board Regulatory Framework – A Revisit
- Private placement
- Issue of equity shares with differential voting rights
- Issue of shares at discount
- Issue of sweat equity shares
- Issue of shares on premium
- Issue of shares on preferential basis
- Issue of Bonus shares
- Issue and redemption of preference shares
- Employee stock option

LEARNING OBJECTIVES

For raising the capital from the public, through issue of securities, listed companies have to comply with the provisions of Companies Act, 2013, the Securities Contract (Regulation) Act 1956, SEBI (ICDR) Regulation, 2009, other relevant regulations of SEBI, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, stock exchanges, etc. unlisted companies have to comply with the provisions of Companies Act 2013 and the rules made thereunder.

After going through this lesson, student will be able to understand procedural aspects of issue of securities through various modes like private placement, rights issue, bonus issue, issue of shares at premium, issue of sweat equity shares, issue of shares under Employee Stock Option Scheme [Regulated by SEBI (Employee Stock Option Scheme) Regulations, 2005] and also procedural aspects relating to all aspects of issue of share certificates, forfeiture and buyback of securities. The details relating to issue of securities by listed company can be referred to the study “Secretarial Audit, Due Diligence and Compliance Management”.

BROAD REGULATORY FRAMEWORK – A REVISIT

Chapter III of the Companies Act, 2013 deals with “Prospectus and allotment of securities”. This chapter is divided into two parts, Part I deals with Public Offer and Part II deals with Private Placement.

“Public offer” includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus. (Explanation to section 23)

Private placement means offer of securities or invitation to subscribe securities to a selected group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in section 42 of the Companies Act, 2013. [Explanation II to Section 42(2)]

Provisions relating to Issue of Securities (Section 23)

Issue of securities by a public company. A public company may issue securities:

- (a) To public through prospectus (“public offer”) by complying with the provisions of Part I of Chapter III of the Act; or
- (b) Through private placement by complying with the provisions of Part II of Chapter III of the Act; or
- (c) Through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the SEBI Act, 1992 and the rules and regulations made thereunder.
 - In the case of a Public Company, which is a listed entity or is desirous of listing its securities on a recognized stock exchange in India, the issue of securities is governed by the Companies Act, Securities Contract Regulation Act, 1956, the SEBI Act, 1992 and the Issue of Capital and Disclosure Requirements (Regulations), 2009.
 - Issue of securities by a private company
 - For a private company the section provides that a private company may issue securities (a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or (b) through private placement by complying with the provisions of Part II Chapter III of the Act.
 - In the case of all issues by Private Companies, the same is governed by the Companies Act, 2013 and the power of administration is exercised by the Central Government, the Tribunal or the Registrar of Companies as the case may be.

Dematerialization

Section 29 of the Act provides that every company making public offer of any security, shall issue the securities only in dematerialized form by complying with the provisions of Depositories Act, 1996 and the regulations made thereunder.

According to Rule 9 of Companies (Prospectus and Allotment of Securities) Rules, 2014 made under Chapter III of the Act, the promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialized form.

The entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted in to dematerialized form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.

LET US UNDERSTAND CERTAIN TERMS

Securities

Securities has been defined under section 2(81) to mean the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. The relevant section says that securities include :

- (h) “securities” include –
- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
 - (ia) derivative;
 - (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;]
 - (ic) security receipt as defined in clause (zg) of section 2 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - (id) units or any other such instrument issued to the investors under any mutual fund scheme.

Explanation. – For the removal of doubts, it is hereby declared that “securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938);

- (ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
- (ii) Government securities;
- (iia) such other instruments as may be declared by the Central Government to be securities; and
- (iii) rights or interest in securities.

Prospectus

In general parlance prospectus refers to an information booklet or offer document on the basis of which an investor invests in the securities of an issuer company.

The prospectus has been defined under section 2(70) so as to mean any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

Red herring Prospectus under explanation to section 32 has been defined as a prospectus which does not include complete particulars of the quantum or price of the securities included therein. In simple terms a red herring prospectus contains most of the information pertaining to the company’s operations and prospects, but does not include key details of the issue such as its price and the number of shares offered. A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

Shelf Prospectus under explanation to section 31 has been defined as a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. In simple terms Shelf Prospectus is a single prospectus for multiple public. Issuer

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is permitted to offer and sell securities to the public without a separate prospectus for each act of offering for a certain period. Such prospectus is to be submitted at the stage of the first offer of securities which shall indicate a period not exceeding one year as the period of validity of such prospectus. The validity period shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

Deemed Prospectus

According to section 25(1) of the Companies Act, 2013, when a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made, shall, for all purposes, be deemed to be a prospectus issued by the company.

Section 25(2) provides that unless the contrary is proved, it shall be the evidence that an allotment of, or an agreement to allot, securities was made with a view to securities being offered for sale to the public if it is shown:-

- (A) that an offer of securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot, or
- (B) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it

Abridged Prospectus

According to section 2(1) of the Act "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Section 33 of the Act provides that no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus.

The procedural checklist with respect to issue of securities through public offer and various issues by listed company are dealt in detail in the paper 'Secretarial Audit, Compliance Management and Due diligence, in Lesson of "Issue of Securities"'.

PRIVATE PLACEMENT

Under the private placement, the offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, (excluding qualified institutional buyers, and employees of the company being offered securities under a scheme of employee stock option), in a financial year and on such conditions as may be specified under Rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules, 2014. Rule 14(2) prescribes that such offer or invitation shall be made to not more than 200 persons in aggregate in a Financial Year.

Private Placement to treated as Public Offer

According to section 42(4) any offer or invitation not in compliance with the provisions of section 42 shall be treated as public offer and all provisions of this Act, and Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall required to be complied with.

Offer Made only to Specified Persons

Section 42(7) states that private placement shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such person shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the registrar within a period of 30 days of circulation of the relevant private placement offer letter. Section 42(7) is not applicable to Specified IFSC private and public company.

Allotment of Securities

According to subsection (6) of section 42, the company shall allot its securities within 60 days from the date of receipt of application money, if it does not allot within 60 days then the application money shall be repaid within 15 days after the expiry of 60 days and if company does not pay money after the aforesaid period, the company is liable to repay the money with interest @ 12% per annum from the expiry of 60 days.

However, the Specified IFSC public and private company shall allot its securities within 90 days from the date of receipt of application money, if it does not allot within 90 days then the application money shall be repaid within 15 days after the expiry of 90 days and if company does not pay money after the aforesaid period, the company is liable to repay the money with interest @ 12% per annum from the expiry of 90 days.

Monies to be kept in separate bank account

The monies received shall be kept in separate bank account with a scheduled bank and shall not be utilized for any purpose other than –

- (a) For adjustment against allotment of securities
- (b) For the repayment of monies where the company is unable to allot securities.

Exemption to NBFC and HFC

Sub rule 5 of Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that the criteria of offer or invitation to 200 persons in aggregate in a financial year and minimum investment size of twenty thousand rupees of face value shall not be applicable to Non banking Financial Companies registered with the Reserve bank of India and Housing Finance Companies registered with the National Housing Bank, if they are complying with the regulations made by RBI or NHB in respect of offer or invitation to be issued on private placement basis.

PROCEDURE TO MAKE ALLOTMENT THROUGH PRIVATE PLACEMENT

1. Hold the board meeting and pass board resolution for convening the meeting of members and approving draft notice of meeting of members.
2. Hold the general meeting and pass the special resolution.
3. Send letter of offer in Form **PAS.4** along with application form to the proposed subscribers, whose names are recorded by the company prior to the invitation subscribe
4. File Form **MGT.14** along with the fees as provided in the Companies (Registration of Offices and Fees) Rules, 2014, with the Registrar within 30 days of passing the resolution.
5. The explanatory statement annexed to the notice for the general meeting required u/s 102 shall disclose the basis or justification for the price (including premium, if any) at which the offer or invitation is being made.
6. If the said offer or invitation is for non-convertible debentures, it shall be sufficient if the company has passed a previous special resolution during year for all the offers or invitation for such debentures.
7. The offer or invitation shall not be made to not more than 200 persons in the aggregate in a financial year excluding QIBs and employees offered securities under ESOP.
8. The value of such offer or invitation per person shall be with an investment size of not less than 20,000 rupees of face value of the securities.
9. All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

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10. The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscriptions have been received and the monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.
11. The company shall maintain a complete record of private placement offers in Form **PAS-5**:
12. File form **PAS-5** along with the private placement offer letter in Form **PAS-4** with the Registrar with fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and where the company is listed, with the Securities and Exchange Board within a period of 30 days of circulation of the private placement offer letter.
13. A return of allotment of securities under section 42 shall be filed with the Registrar within thirty days of allotment in Form **PAS-3** and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all security holders containing –
 - (i) The full name, address, Permanent Account Number and E-mail ID of such security holder;
 - (ii) The class of security held;
 - (iii) The date of allotment of security;
 - (iv) The number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.
14. Issue share certificates and update minutes book and registers.
15. Company shall intimate the details of allotment of securities to depository immediately on allotment of such shares.

Note: Explanation I to Section 42 (2) read along with section 42 (4), provides that any offer or invitation not in compliance with provisions of this section shall be treated as public offer and all the provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the SEBI Act, 1992 shall be required to be complied with.

EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHT

An equity share with differential rights is like an ordinary equity share, but it provides fewer voting rights to the shareholder. The difference in the voting rights can be achieved by reducing the degree of voting power. Companies issue equity share with differential rights for prevention of a hostile takeover and dilution of voting rights. It also helps strategic investors who do not want control, but are looking at a reasonably big investment in a company.

Section 43 provides that the share capital of a company limited by shares shall be of two kinds, namely:-

- (a) Equity share capital –
 - (i) With voting rights; or
 - (ii) With differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed.
- (b) preference share capital

Section 43 shall not apply to a Specified IFSC public company, where memorandum of association or articles of association of such company provides for it. [Notification Date 4th January, 2017]

Rule 4 of the Companies (Share Capital and Debentures) Rules, 2014 provides that no company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the conditions mentioned in this rules.

Procedure for Issue of Equity Shares with Differential Voting Rights

1. Check whether the Articles of Association of the company authorizes issue of equity shares with differential rights and if not, then amend the Articles of Association of the company.
2. Hold the Board meeting to issue the notice of general meeting for issuance of equity share with differential rights along with the explanatory statement u/s 102 of the Act.
3. Before issuing equity shares with differential rights as to dividend, voting or otherwise, ensure the following:
 - (i) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
 - (ii) the company has consistent track record of distributable profits for the last three years;
 - (iii) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
 - (iv) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
 - (v) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;

However, the company may issue equity shares with differential rights upon expiry of five years from the end of the financial year in which such default was made good.
 - (vi) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.
4. If the company is listed with any of the recognized stock exchange, then within 15 minutes of the closure of the aforesaid Board Meeting intimate to the concerned Stock Exchange about the decision taken at the Board Meeting.
5. Pass the ordinary resolution in the general meeting.
6. If the company is listed or if the number of members are more than 200 then ensure it obtains the approval of its shareholders through postal ballot as per rule 22 of the Companies (Management and administration) Rules, 2014.
7. Once the company makes any allotment, then its shall, within 30 days thereafter, file with the Registrar a return allotment in **Form PAS-3**, along with the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014.
8. The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and *vice-versa*.
9. In case of listed company, send copies of the notice and a copy of the proceedings of the general meeting to the stock exchange within 24 hours of the occurrence of event. [Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements), 2015]

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10. Complete all other proceedings for the issue of certificate of shares with differential voting rights making necessary entries in various registers. In case of a company whose shares are dematerialized form, inform the depositories about the same for credit to the respective accounts.
11. Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.
12. Maintain the Register of Members under section 88 containing all the relevant particulars of the shares so issued along with details of the shareholders.

ISSUE OF SHARES AT DISCOUNT

Section 53 of the Companies Act, 2013, prohibits a company to issue shares at discount except in the case of issue of sweat equity shares. Any shares issued by a Company at a discount price shall be void.

A company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme

Where a company contravenes the provisions of section 53, 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 in default shall be punishable with imprisonment for a term of which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

ISSUE OF SWEAT EQUITY SHARES

According to Section 2(88) of the Companies Act, 2013, sweat Equity Shares means such equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Sweat equity shares are different from shares issued by a company under Employee Stock Option Scheme (ESOS) and Employee Stock Purchase Scheme (ESPS).

The rights, limitations, restrictions and provisions applicable to equity shares shall be applicable to sweat equity shares and holders of such shares shall rank *pari-passu* with other equity shareholders.

Conditions for issuance of Sweat Equity Shares

Section 54 provides that, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:-

- (a) The issue is authorized by a special resolution passed by the company;
- (b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (c) Not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and [Not applicable to Specified IFSC public and private company]
- (d) Where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by SEBI in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules made under the Chapter IV of the Companies Act, 2013.

Procedure for Issue of Sweat Equity Shares

The company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity in a year or shares of the issue value of rupees five crores, whichever is higher. The issuance of such sweat equity shares in the company shall not exceed twenty five percent of the paid up equity capital of the company at any

time. However, a startup company may issue sweat equity shares not exceeding fifty percent of its paid up capital upto five years from the date of incorporation or registration.

1. Convene Board meeting to approve the notice of general meeting.
2. Issue notices in writing or through electronic mode, at least clear twenty one days before the date of meeting along with the explanatory statement as required u/s 102.
3. The explanatory statement to be annexed to notice and the resolution for approving the sweat equity shall *inter alia* contain the following information:
 - (a) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;
 - (b) The reasons or justification for the issue;
 - (c) The class of shares under which sweat equity shares are intended to be issued;
 - (d) The total number of shares to be issued as sweat equity;
 - (e) The class or classes of directors or employees to whom such equity shares are to be issued;
 - (f) The principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation;
 - (g) The time period of association of such person with the company;
 - (h) The names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;
 - (i) The price at which the sweat equity shares are proposed to be issued;
 - (j) The consideration including consideration other than cash, if any to be received for the sweat equity;
 - (k) The ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;
 - (l) a statement to the effect that the company shall conform to the applicable accounting standards; and
 - (m) Diluted Earnings Per Share pursuant to the issue of sweat equity shares , calculated in accordance with the applicable accounting standards.
4. A copy of gist along with critical elements of the valuation report shall be sent to the shareholders with the notice of the general meeting.
5. Hold the general meeting and pass the Special Resolution.
6. The special resolution authorizing the issue of sweat equity shares shall be valid for making the allotment within a period of not more than 12 months from the date of passing of the special resolution.
7. File the special resolution with the concerned ROC with explanatory statement in **Form MGT. 14** along with the fees as provided in Companies (Registration of Offices and Fees) Rules, 2014 within 30 days of passing of the special resolution.
8. If the shares of the company are listed with the stock exchange, then forward copies of the notice and a copy of the proceedings of the general meeting.
9. If the shares are listed with any of the recognized stock exchange, then issue of the sweat equity shares shall be in accordance with SEBI (Issue of Sweat Equity) Regulations, 2002.
10. Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in **Form PAS.3**, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

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11. The company shall maintain a register of Sweat Equity Shares in **Form SH.3** at the registered office or such other place as the Board may decide. The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the board for the purpose.
12. Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.
13. Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.

ISSUE OF SHARES AT A PREMIUM

The word 'premium' implies something more than normal. With reference to shares and securities issued by a company, premium means a sum over and above the face or par value of a security. It is the amount which is excess of the issue price of a share over its face value (or par value) and is referred to as 'share premium'. When shares are issued by a company at a price above their face value (or par value) then the shares are said to have been issued at a 'premium'. It is the difference between the price at which a company issues a share and the face value of a share.

Application of Securities Premium Account

Section 52 of the Companies Act, 2013 deals with the application of premium received on issue of shares. In accordance with sub-section (1) of section 52, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premium on those shares shall be transferred to an account, to be called, "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company. The securities premium account may be applied by the company—

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68.

Sub section 3 of section 52 provides that the securities premium account may, be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, –

- (a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
- (b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
- (c) for the purchase of its own shares or other securities under section 68.

FURTHER ISSUE OF SHARES CAPITAL

Section 62 of the Companies Act contains provisions relating to further issue of share capital through

- (a) Rights issue of shares [Section 62(1)(a)]
- (b) Issue of shares through Employee Stock Option [Section 62(1)(b)]

- (c) Issue of shares on Preferential Basis [Section 62(1)(c)]

Rights Issue of Shares

Section 62. (1) states that at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered –

- (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:–

- (i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

However, in case of private companies in case 90% of members have given their consent in writing or in electronic mode, the lesser period than the specified period shall apply.

Further, in case of a Specified IFSC public company, the periods lesser than those specified shall apply if ninety per cent of the members have given their consent in writing or in electronic mode.

- (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;
- (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;

Procedure for issue of Right Shares

- (i) Check whether the rights issue results in increase of authorized capital.,
- (ii) If so call a board meeting to approve the notice of General meeting to pass necessary special resolutions at the general meeting to amend Memorandum/Articles of Association
- (iii) Convene the general Meeting and obtain shareholders' approval through special Resolution.
- (iv) The offer should be made by notice, specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined. This notice shall be despatched through Registered post or speed post or through electronic mode to all the existing shareholders atleast three days before the opening of the issue. However, in case of private companies in case 90% of members have given their consent in writing or in electronic mode, the lesser period than the specified period shall apply.
- (v) Check the copy of form SH 7, MGT14 filed with ROC.
- (vi) The shares declined by the existing shareholder can be disposed off by the company in manner which is not disadvantageous to the shareholders and the company.
- (vii) Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in **Form PAS.3**, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.
- (viii) Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.
- (ix) Intimate the details of allotment of shares to the Depository immediately on allotment of such shares

EMPLOYEE STOCK OPTION

As per Section 62(1) (b) of Companies Act 2013, the Company can offer shares through employee stock option to their employees through special resolution subject to the conditions specified under Rule 12 of Companies (Share Capital and Debentures) Rules, 2014. However, a Specified IFSC Public Company can offer shares through employee stock option to their employees through ordinary resolution.

For the purposes of clause (b) of sub-section (1) of section 62 and this rule “Employee” means –

- (a) A permanent employee of the company who has been working in India or outside India; or
- (b) A director of the company, whether a whole time director or not but excluding an independent director; or
- (c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company.

But does not include –

- (i) An employee who is a promoter or a person belonging to the promoter group; or
- (ii) A director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

However, in case of startup company, as defined in notification number GSR 180(E) dated 17th February, 2016, issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry Government of India, Government of India, the conditions mentioned in (i) and (ii) shall not apply upto five years from the date of its incorporation or registration.

Procedure for issue of securities to employees through “Employees Stock Option Scheme”

- (1) Convene a Board Meeting to approve the notice of the General meeting along with special resolution, explanatory statement etc., to be approved by the shareholders through special resolution.

In case of private company, it is sufficient that they obtain ordinary resolution.

- (2) The company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution-
 - (a) The total number of stock options to be granted;
 - (b) Identification of classes of employees entitled to participate in the Employees Stock Option Scheme;
 - (c) The appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;
 - (d) The requirements of vesting and period of vesting;
 - (e) The maximum period within which the options shall be vested;
 - (f) The exercise price or the formula for arriving at the same;
 - (g) The exercise period and process of exercise;
 - (h) The Lock-in period, if any;
 - (i) The maximum number of options to be granted per employee and in aggregate;
 - (j) The method which the company shall use to value its options;
 - (k) The conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct;

(l) The specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and

(m) A statement to the effect that the company shall comply with the applicable accounting standards.

Ensure that the special resolution is filled with ROC in MGT 14 within 30 days of passing the resolution.

- (3) The companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.
- (4) The approval of shareholders by way of separate resolution shall be obtained by the company in case of-
- (a) Grant of option to employees of subsidiary or holding company; or
 - (b) Grant of option to identified employees, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.
- (5) (a) The company may by special resolution, vary the terms of Employees Stock Option Scheme not yet exercised by the employees provided such variation is not prejudicial to the interests of the option holders.
- (b) The notice for passing special resolution for variation of terms of Employees Stock Option Scheme shall disclose full of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation.
- (6) (a) There shall be a minimum period of one year between the grant of options and vesting of option.
- Provided that in a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause;
- (b) The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.
 - (c) The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.
- (7) The amount, if any, payable by the employees, at the time of grant of option-
- (a) May be forfeited by the company if the option is not exercised by the employees within the exercise period; or
 - (b) The amount may be refunded to the employees if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme.
- (8) (a) The option granted to employees shall not be transferable to any other person.
- (b) The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.
 - (c) Subject to clause (d), no person other than the employees to whom the option is granted shall be entitled to exercise the option.
 - (d) In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.
 - (e) In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.

(f) In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.

(9) The Board of directors, shall, inter alia, disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme:

(a) Options granted;

(b) Options vested;

(c) Options exercised;

(d) The total number of shares arising as a result of exercise of option;

(e) Options lapsed;

(f) The exercise price;

(g) Variation of terms of options;

(h) Money realized by exercise of options;

(i) Total number of options in force;

(j) Employee wise details of options granted to;-

(i) Key managerial personnel;

(ii) Any other employee who receives a grant of options in any one year of option amounting to five percent or more of options granted during that year.

(iii) Identified employees who were granted option, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;

(10) (a) The company shall maintain a Register of Employee Stock Options in **Form No. SH.6** and shall forthwith enter therein the particulars of option granted under clause (b) of sub-section (1) of section 62.

(b) The Register of Employee Stock Options shall be maintained at the registered office of the company or such other place as the Board may decide.

(c) The entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

(11) Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in **Form PAS.3**, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

(12) Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.

(13) Intimate the details of allotment of shares to the Depository immediately on allotment of such shares

(14) Where the equity shares of the company are listed on a recognized stock exchange, the Employees Stock Option Scheme shall be issued, in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

ISSUE OF SHARES ON PREFERENTIAL BASIS

Section 62(1)(c) of the Companies Act 2013 read with Rule 13 of Companies (Share Capital and Debentures) Rules

2014 enables issue of shares to persons other than the existing shareholders/employees as specified in Section 62(1)(a) and Section 62(1)(b), provided if the same is approved by special resolution and subject to the conditions stated in the said Rule 13.

Procedure for issue of shares on Preferential basis

- (a) Check whether the issue is authorize by Articles. If not make necessary amendments to alter the articles of association, through special resolution passed at the shareholders' meeting.
- (b) Convene a Board Meeting to approve the notice of General Meeting and necessary special Resolution/s along with explanatory statements as required.

It is to be noted that preferential issue of share are required to comply with section 42 also which relates to private placement. However, in case of preferential offer to one or more existing members the aspects relating to letter offer as stated in rule 14(1) and proviso to rule 14(3) of Companies (Prospectus & Allotment of Securities) Rules, 2014 shall not apply.

- (c) The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act:
 - (i) The objects of the issue;
 - (ii) The total number of shares or other securities to be issued;
 - (iii) The price or price band at/within which the allotment is proposed;
 - (iv) Basis on which the price has been arrived at along with report of the registered valuer;
 - (v) Relevant date with reference to which the price has been arrived at;
 - (vi) The class or classes of persons to whom the allotment is proposed to be made;
 - (vii) Intention of promoters, directors or key managerial personnel to subscribe to the offer;
 - (viii) The proposed time within which the allotment shall be completed;
 - (ix) The names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
 - (x) The change in control, if any, in the company that would occur consequent to the preferential offer;
 - (xi) The number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
 - (xii) The justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
 - (xiii) The pre issue and post issue shareholding pattern of the company in the prescribed format-
- (d) Convene General Meeting and pass necessary Special Resolution/s.
- (e) Ensure to file Form MGT-14 with Registrar of Companies within 30 days of passing the Resolution.
- (f) the allotment of securities on a preferential basis made pursuant to the special resolution passed pursuant to sub-rule (2)(b) shall be completed within a period of 12 months from the date of passing of the special resolution. If the allotment of securities is not completed within 12 months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.
- (g) the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer; and when

convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined :

- (i) either upfront at the time when the offer of convertible securities is made on the basis of valuation report of the registered valuer given at the stage of such offer, or
- (ii) at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares.

The company shall take a decision on the above clause (i) and (ii) at the time of offer of convertible security itself and make such disclosure in the explanatory statement to be annexed to the notice.

- (h) Where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;
- (i) Where the preferential offer of shares is made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company-
 - (i) Where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
 - (ii) Where clause (i) is not applicable, it shall be expensed as provided in the accounting standards.
- (j) Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in **Form PAS.3**, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.
- (k) Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.
- (l) Intimate the details of allotment of shares to the Depository immediately on allotment of such shares

ISSUE OF BONUS SHARE

Companies issue bonus shares to encourage retail participation and increase their equity base. When price per share of a company is high, it becomes difficult for new investors to buy shares of that particular company. Increase in the number of shares reduces the price per share. But the overall capital remains the same even if bonus shares are declared.

Sources of Bonus share

Section 63 provides that a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of –

- (i) Its free reserves;
- (ii) The securities premium account; or
- (iii) The capital redemption reserve account.

No issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets. The bonus shares shall not be issued in lieu of dividend.

Conditions for issue of Bonus Share

The following conditions must be satisfied before issuing bonus shares:

- (a) It is authorized by its articles;
- (b) It has, on the recommendation of the Board, been authorized in the general meeting of the company;
- (c) It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (d) It has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (e) The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
- (f) It complies with such conditions as may be prescribed. (Conditions prescribed under rule 4 of Companies (Share Capital and Debentures) Rules, 2014)

Restrictions on withdrawal of Bonus Issue

Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014 provides that the company which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same.

Procedure for issue of Bonus share

1. Check whether the Article of Association authorizes issue of bonus share. If not, then amend the Articles of Association of the company by passing the Special Resolution.
2. Check whether the Bonus issue results in increase of authorized capital. If so, make necessary alterations in the Memorandum/Articles of Association by passing special Resolution.
3. In the case of listed entity, give prior intimation to the stock exchange at least two working days in advance of the date of Board Meeting excluding the date of intimation and the date of the meeting [Refer Regulation 29 of Listing Regulations]
4. Hold the Board Meeting and get the following proposal to be approved by the Board:
 - (i) To recommend the bonus issue;
 - (ii) To approve the resolution to be passed at a general meeting;
 - (a) To authorize the Bonus issue
 - (b) To approve requisite resolution for increase of the capital and consequential alteration of the Memorandum of Association/Articles of Association(if necessary)
 - (c) To enable the Articles to authorize the issue, if necessary.
5. Ensure that bonus issue has been made out of free reserves built out of the genuine profits or securities premium or capital redemption reserve account.
6. Ensure that reserves created by revaluation of assets are not capitalized.
7. Ensure that the company has not defaulted in payment of interest or principal in respect of fixed deposits and or debt securities issued by it or in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus etc.
8. Ensure that the bonus issue is not made in lieu of dividend.
9. The company which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same.
10. If there are any partly paid-up shares, ensure that these are made fully paid-up before the bonus issue is recommended by the Board of directors.

11. Hold the general meeting and get the resolution/s for issue of bonus shares passed by the members.
12. Once Special Resolution is passed file **Form MGT-14** along with the fees with the Registrar **within 30 days** of passing of the resolution along with the altered article of association.
13. Within 30 days of allotment file with the registrar the Return of allotment in **Form PAS-3** along with fee as specified in Companies (Registration of Offices and Fees), Rules 2014.
14. All share certificates shall be delivered to the shareholders within two months from the date of allotment of bonus issue as required under section 56(4). In case of a Specified IFSC public and private company the share certificates shall be delivered within sixty days of allotment.
15. Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.
16. In case of listed companies, the conditions prescribed under listing regulations and Chapter IX of SEBI (ICDR) Regulations, 2009 are to be complied with.

ISSUE AND REDEMPTION OF PREFERENCE SHARES

Section 55 of the Companies Act, 2013 read with Rules 9 and 10 of Companies (Share Capital and Debentures) Rules, 2014 prescribes conditions/procedure relating to issue and redemption of preference shares.

No company limited by shares shall issue irredeemable preference shares however a company limited by shares may if so authorized by its articles, issue preference shares for a period not exceeding 20 years from the last date of their issue subject to such conditions prescribed in rules. The company engaged in setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding 20 years but not exceeding 30 years, subject to the redemption of a minimum 10 percent of such preference shares per year from the 21st year onwards or earlier, on proportionate basis, at the option of the preference shareholders (Rule 10) The term infrastructural projects means the infrastructural projects specified in Schedule VI of the Companies Act, 2013.

Procedure to issue and redemption of Preference Shares

- (1) For issue of preference shares the articles of the company should authorize for it, if not then amendment in the articles of the company is required. Also ensure that there is no subsisting defaults in redemption of preference shares either before/after the commencement of this Act or in payment of dividend due on any preference shares.
- (2) The company issuing preference shares shall set out in the resolution the particulars in respect of the following matters relating to such shares namely:
 - (a) The priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares;
 - (b) The participation in surplus fund;
 - (c) The participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;
 - (d) The payment of dividend on cumulative or non-cumulative basis.
 - (e) The conversion of preference shares into equity shares.
 - (f) The voting rights;
 - (g) The redemption of preference shares.
- (3) Issue the notice of general meeting along with the explanatory statement, to provide the required details.
In the case of listed entity, intimate the stock exchange atleast two working days in advance of the date of board meeting (Refer Regulation 29 of Listing Regulations)
- (4) Pass special resolution and file with the registrar **Form MGT-14** along with the fee or the additional fee so

specified in the Companies (Registration of Offices and Fees) Rules, 2014 within 30 days of passing the resolution

Note: in case of One Person Company for the purpose of passing of ordinary and special resolution in general meeting, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if the resolution is communicated by the member to the company and entered in the minutes book and signed and dated by the member and such date shall be deemed to be the date of meeting for all purpose under this act.

- (5) Within 30 days of allotment file with the registrar the Return of allotment in **Form PAS-3** along with fee as specified in companies (Registration of Offices and Fees), Rules 2014
- (6) Update the register of members maintained under section 88 after issue of preference shares
- (7) The company may redeem the preference shares only on the terms on which they were issued or as varied after due approval of preference share holders
- (8) The preference shares may be redeemed as given below:
 1. At a fixed time or happening of a particular event
 2. Any time at the company's option
 3. Any time at the shareholders option
- (9) The notice of redemption of preference shares shall be filed by the company with the Registrar in **Form SH-7** along with altered MOA with the fee as specified in Companies (Registration of Offices and Fees), Rules, 2014 within 30 days of redemption of preference shares.
- (10) Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in **Form PAS.3**, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.
- (11) Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.
- (12) Intimate the details of allotment of shares to the Depository immediately on allotment of such shares

The legal and the procedural aspects relating to buy back and reduction of share capital are discussed in detail in PAPER- Corporate Restructuring, valuation or Insolvency. Students may refer the same.

LESSON ROUND UP

- A Public company may issue securities through prospectus or through private placement or through right issue or bonus issue.
- In the case of issue by a private company the same is governed by the Companies Act 2013 and the power of administration is exercised by the Central Government.
- Prospectus refers to information booklet or offer documents on the basis of which an investor invests in the securities of an issuer company.
- The company shall allot its securities within 60 days from the date of receipt of application money, if it does not allot within 60 days then the application money shall be repaid within 15 days after the expiry of 60 days.
- According to Section 53 it prohibits a company to issue shares at discount except in the case of issue of sweat equity shares. Any shares issued by a company at a discounted price shall be void.

Lesson 4

Alteration of Share Capital

LESSON OUTLINE

- Alteration of share capital
- Procedure for Increase in share capital
- Procedure for consolidation of share capital
- Procedure for sub-division of share capital
- Conversion of shares into stock
- Re-conversion of stock into fully paid shares
- Forfeiture of shares
- Cancellation of shares
- Surrender of shares
- Reduction of share capital
- Annexures – Specimen Resolutions
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Every company limited by shares must have a share capital. Share capital of a company refers to the amount invested in the company for it to carry out its operations. The capital clause in Memorandum of Association states the amount of capital with which company is registered giving details of number of shares and the type of shares of the company. The share capital may be altered or increased, subject to certain conditions. A company cannot issue share capital in excess of the limit specified in the capital clause without altering the capital clause of the memorandum of association.

Under the Companies Act, 2013, a company limited by shares, if authorized by its articles of association, can alter the capital clause of its memorandum of association. Such alteration may either involve increase in share capital by issuing new shares, consolidation and division of share capital into shares of larger amount than existing shares, conversion of fully paid shares into stock, re-conversion of that stock into shares, sub-division of shares, cancellation of its shares, surrender of shares, reduction of share capital etc.

In terms of section 118(10) of Companies Act, 2013 every company is required to observe Secretarial Standards with respect to general and Board meetings as specified by Institute of Company Secretaries of India.

After going through this lesson, students will be able to understand practical and procedural aspects relating to alteration of its share capital and related compliances.

ALTERATION OF SHARE CAPITAL OF A COMPANY

According to Section 61(1), a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to –

- a) increase its authorised share capital by such amount as it thinks expedient;
- b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:
Provided that no consolidation and division which result in changes in the voting per cent of shareholder shall take effect unless it is approved by the Tribunal or an application made in the prescribed manner. (Notified w.e.f. 1st June, 2016)
- c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum; and
- e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

The cancellation of shares as stated in (e) above shall not be deemed to be a reduction of share capital. A company can exercise its powers to alter its share capital only if it is authorised by its articles. If the articles do not contain any such authorization, the articles must first be amended, before the power can be exercised. The power must be exercised *bona fide* in the interest of the company and not for benefitting any group (Piercy vs. Mills(s) & Co., (1920) 1 Ch. 77.)

Consolidation and division of shares, which results in changes in the voting percentage of shareholders shall take effect after it is approved by the Tribunal.

Filing of Notice of Change in Share Capital with ROC

Section 64 of the Act makes it obligatory on the part of a limited company having share capital, which alter its share capital under section 61, or alter share capital on order of Government under Section 62 or redeems any redeemable preference shares shall file a notice in Form SH-7 with the Registrar within a period of thirty days of such alteration or increase or redemption along with altered memorandum. This form requires Certificate from practicing professional.

PROCEDURE FOR INCREASING SHARE CAPITAL

The need to increase the authorized capital may arise when the company is planning to enlarge its operations by fresh issue of capital. For increasing its authorized share capital, the following procedure has to be followed by a limited company having a share capital:

1. The company has to ensure that its articles of association contain a clause authorising it to increase its authorised share capital. If there is no such provision, then the company has to take steps for alteration of its articles of association in accordance with the provisions of section 14 of the Companies Act, 2013, so as to provide for power to increase the share capital of the company before increasing its authorised share capital. Thus, if the increase of share capital results in alteration of articles of association special resolution is required. Otherwise ordinary resolution is to be passed.
2. Issue notice in accordance with the provisions of Section 173(3) of the Act for convening a Board meeting.
3. Hold the meeting –
 - (i) to decide about the increase in the authorised share capital of the company;

- (ii) to fix time, date and venue for holding general meeting of the company to pass a special resolution/ordinary resolution as the case may be for increasing the authorised share capital of the company [Section 13(1)];
 - (iii) to approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per Section 101 and 102 of the Act;
 - (iv) to authorise the company secretary, if any or a Director to issue, on behalf of the Board, notice of the general meeting as approved by the Board.
4. In case of a listed company, soon after the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed increase in the authorised share capital of the company [Refer Regulation 30].
 5. Issue notice of the general meeting to all members, directors and the auditors of the company. [Section 102].
 6. In case of a listed company, send copies of the notice of the general meeting to the concerned stock exchanges as per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
 7. Hold the general meeting and pass special resolution for increasing the authorised share capital of the company [Section 13(1)];
 8. In case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchange.
 9. File with the Registrar within thirty days of passing of the resolution, Form MGT – 14 with a certified true copy of the special resolution passed at the general meeting along with a copy of the notice and explanatory statement annexed to the notice of the general meeting, copy of altered Memorandum of Association and Articles of Association.
 10. File with ROC, Form SH – 7 along with the registration fee on increased authorised capital within 30 days of the passing of the resolution as per Section 64 of the Act. Following documents shall be attached along with Form SH – 7:
 - (i) Copy of the resolution for alteration of capital;
 - (ii) Copy of order of Central Government;
 - (iii) Copy of the order of the Tribunal;
 - (iv) Copy of Board resolution authorizing redemption of redeemable preference shares;
 - (v) Altered memorandum of association;
 - (vi) Altered articles of association;
 - (vii) Workings for calculation of ratios
 - Stamp duty on Form SH – 7 can be paid electronically through the MCA portal.
 - Payment of stamp duty electronically through MCA portal is mandatory in respect of the States which have authorized the Central Government to collect stamp duty on their behalf.
 - Refund of stamp duty, if any, will be processed by the respective State or Union Territory Government in accordance with the rules and procedures as per the State or Union Territory Stamp Act.
 11. Intimate stock exchange about alterations in memorandum and articles of the company within 24 hours of the occurrence of event. [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].
 12. Alter the capital clause in all the copies of the memorandum and articles of association of the company lying at the registered office of the company so that no unaltered copy thereof is issued to any person. Please not

that Secretarial Standards-1 and Secretarial Standards-2 are applicable while conducting Board and general meetings [Section 118(10)]

PROCEDURE FOR CONSOLIDATION OF SHARE CAPITAL

For consolidation of share capital, a company is required to take the following procedural steps:

1. It must ensure that its articles of association contain a clause, authorizing it to consolidate its shares. If there is no such provision, the articles should be first altered in accordance with the provisions of Section 14 of the Companies Act, 2013.
2. Give twenty-one clear days' notice of the proposed consolidation of the shares of the company to the stock exchanges where the securities of the company are listed.
3. Make an application to the stock exchanges where the securities of the company are listed and any other stock exchange where company proposes for getting its consolidated shares listed.
4. Convene and hold a Board meeting to –
 - (i) Pass a resolution approving the proposed consolidation of the shares of the company;
 - (ii) Fix time, date and venue for holding a general meeting of the company to pass a special resolution, if so required by the articles for this purpose [Section 13 (1)];
 - (iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per Section 101 and 102 of the Act;
 - (iv) Authorise the company secretary or some other competent officer to issue, on behalf of the Board, notice of the general meeting as approved by the Board.
5. In the case of a listed company, soon after the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such alteration of share capital of the company.
6. Issue notice of the general meeting along with the explanatory statement, to all members, directors and auditors of the company.
7. In the case of a listed company, send copies of the notice of the general meeting along with the explanatory statement, to the concerned stock exchanges as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
8. Hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.
9. In the case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges as SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
10. File with the ROC, Form MGT – 14 along with a certified copy of the resolution, notice and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution.
11. Give notice in compliance with the provisions of section 64 of the Companies Act, 2013, of the consolidation of the shares of the company, to the Registrar in Form SH – 7, within thirty days of the passing of the resolution, along with the prescribed filing fee specifying the shares consolidated. The Registrar will record the alteration in the memorandum of the company.
12. In the case of a listed company, forward to the concerned stock exchanges copies of all the notices sent by the company to its members with respect to the alteration of the conditions in the memorandum of association and six copies (one of which must be certified) of such amendments to the memorandum of association as

soon as they are adopted by the company in general meeting, as per the Listing Regulations signed with the stock exchanges.

13. Make necessary changes in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

Please note that Secretarial Standards-1 and Secretarial Standards-2 need to be complied with while conducting Board and General meetings [Section 118(10)]

PROCEDURE FOR SUB-DIVISION OF SHARE CAPITAL

For sub-dividing the share capital of a company, the following procedural steps are required to be taken by the Board of directors.

1. It must ensure that its articles of association contain a provision authorising it to sub-divide its shares. If there is no such provision then the articles have to be altered in accordance with the provisions of Section 14 of the Companies Act, 2013, before proceeding to sub-divide its shares.
2. Give twenty-one clear days' notice of the proposed sub-division of the shares of the company to the stock exchanges on which the securities of the company are listed.
3. In the case of a listed company, make an application to the stock exchanges where the securities of the company are listed and any other stock exchange where the company proposes for getting its sub-divided shares listed. Convene and hold a Board meeting to –
 - (i) Pass a resolution approving the proposed sub-division of the shares of the company;
 - (ii) Fix time, date and venue for holding general meeting of the company to pass a special resolution, if so required by the articles for this purpose
 - (iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting
 - (iv) Authorise the company secretary to issue, on behalf of the Board, notice of the general meeting as approved by the Board.
5. Soon after the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such alteration of share capital of the company.
6. Issue notice of the general meeting along with the explanatory statement, to all members, directors and auditors of the company.
7. In the case of a listed company, send copies of the notice of the general meeting along with the explanatory statement, to the concerned stock exchanges as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
8. Hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.
9. In the case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges in case of a listed company as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
10. File with the ROC, Form MGT – 14 along with a certified copy of the resolution, the notice and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution along with the prescribed filing fee.
11. Give notice in compliance with the provisions of section 64 of the Companies Act, 2013, of the consolidation of the shares of the company, to the Registrar in Form SH – 7, within thirty days of the passing of the resolution, along with the prescribed filing fee specifying the shares consolidated. The Registrar will record the alteration in the memorandum of the company.

12. Make necessary changes in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

CONVERSION OF SHARES INTO STOCK

Section 61(1)(c) of the Companies Act 2013 provides that a limited company having a share capital, if authorized by its articles may convert any of its fully paid shares into stock, and reconvert stock into fully paid up shares of any denomination. Only fully paid shares can be converted into stock. The issue of a partly paid-up stock is void.

A company limited by shares or by guarantee having a share capital, if so authorised by its articles, may alter its memorandum for converting any of its fully paid-up shares into stock or *vice versa*. When a number of shares are converted into a single holding with a nominal value equal to that of the total value of the shares, it is called conversion of shares into stock. It may be noted that no company is authorised to issue stock directly even against payment of full nominal value in cash. The company must first issue shares which may be converted into stock only when they are fully paid up.

The total amount of the share capital is divided into the number of shares. Each share has a fixed value. A share is a fixed unit of value. When a number of shares are converted into a single holding with a nominal value equal to that of the total value of the shares, it is called conversion of shares into stock.

Stock is the aggregate of the fully paid-up shares legally consolidated and portions of which aggregate may be transferred or split up into fractions of any amount without regard to the original nominal value of shares.

In either case, a notice must be given to the Registrar in Form SH – 7 within thirty days after doing so.

One of the ways of alteration of Share capital of a company is conversion of shares into stock, and also by re-conversion of the stock into shares. For example, if 100 shares of Rs. 10 each are converted into stock of Rs. 1000, the holder of 100 shares of Rs. 10 each will have Rs. 1,000 stock after the conversion. But the resultant value of Rs. 1,000 is not the face value of the shares or the stock.

The convenience of stock, besides its divisibility, is that it becomes no longer necessary in a transfer to specify all the number of various shares comprised in the transfer:

Procedure for Conversion of Fully Paid Shares into Stock

Stock is the aggregate of fully paid shares consolidated. Portions of this aggregate may be transferred or split up into fractions of any amount irrespective of the original nominal value of the shares which have been converted into stock.

A forged transfer of stock does not affect the title of the stockholder [*Davies v. Bank of England* (1824) 2 Bingham 363].

A company which proposes to convert any of its fully paid shares into stock has to follow the following procedure:

1. The company has to make sure that its articles of association contain a provision authorising it to convert its fully paid shares into stock. If there is no such provision, the articles have to be first altered in accordance with the provisions of Section 14 of the Companies Act, 2013.
2. Give the stock exchanges twenty-one days' notice of the proposed conversion of its fully paid shares into stock.
3. Make applications to the stock exchanges on which the securities of the company are listed for listing of the stock which will come into being as a result of conversion of the fully paid shares into stock.
4. Convene and hold a Board meeting to –
 - (i) Pass a resolution in respect of the conversion of fully paid shares of the company into stock.

- (ii) Fix time, date and venue for holding a general meeting of the company to pass a special resolution, if so required by the articles for this purpose [Section 13 (1)].
 - (iii) Approve notice and explanatory statement to be annexed to the notice of the general meeting as per Section 101 and 102 of the Act.
 - (iv) Authorise the company secretary to issue notice of the general meeting as approved by the Board.
5. In the case of a listed company, on the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such alteration to the share capital clause in the memorandum of association of the company.
 6. Issue notice of the general meeting to the members, directors and auditors of the company. In the case of a listed company, forward three copies of the notice of the general meeting to the concerned stock exchanges.
 7. Hold the general meeting and have the Special resolution passed.
 8. In the case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges.
 9. File with the ROC, Form MGT - 14 along with a certified copy of the resolution, the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution along with the prescribed filing fee.
 10. Give notice in compliance with the provisions of section 64 of the Companies Act, 2013, of the consolidation of the shares of the company, to the Registrar in Form SH – 7, within thirty days of the passing of the resolution. The Registrar will record the alteration in the memorandum of the company.
 11. In the case of a listed company, forward to the concerned stock exchanges copies of all the notices sent by the company to its members with respect to the alteration of the conditions in the memorandum of association. Intimate stock exchange about alterations in memorandum and articles of the company within 24 hours of the occurrence of event. [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]
 12. Issue necessary stock certificates in exchange of share certificates.
 13. Remove the names of the persons from the register of members of the company to whom stock has been issued in exchange for the shares.
 14. Make necessary alterations in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

The company is required to ensure observance of Secretarial Standards-1 and Secretarial Standards-2 while holding Board and general meetings.

Effect of Conversion of Shares into Stock

Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the Registrar, all the provisions of this Act which are applicable to shares only, shall cease to apply on so much of the share capital as is converted into stock.

PROCEDURE FOR RE-CONVERSION OF STOCK INTO FULLY PAID SHARES

A company which proposes to convert any of its stock into fully paid up shares has to follow the following procedure:

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1. The company has to make sure that its articles of association contain a provision authorising it to convert its fully paid shares into stock. If there is no such provision, the articles have to be first altered in accordance with the provisions of Section 14 of the Companies Act, 2013.
2. In the case of a listed company, intimate the stock exchanges about of the proposed conversion of its fully paid shares into stock [Refer Listing Regulations].
3. Make applications to the stock exchanges on which the securities of the company are listed for listing of the shares which will come into being as a result of conversion of stock.
4. Convene and hold a Board meeting to –
 - (i) Pass a resolution in respect of the conversion of stock of the company into fully paid shares.
 - (ii) Fix time, date and venue for holding a general meeting of the company to pass a special resolution, if so required by the articles for this purpose [Section 13 (1)].
 - (iii) Approve notice and explanatory statement to be annexed to the notice of the general meeting as per Section 101 and 102 of the Act.
 - (iv) Authorise the company secretary to issue notice of the general meeting as approved by the Board.
5. In the case of a listed company, intimate the stock exchanges, about the proposed alteration with in 30 minutes of closure of the Board meeting.
6. Issue notice of the general meeting as per provisions of the Companies Act to the members, directors and auditors of the company.
7. In the case of a listed company, forward the notice of general meeting to the concerned stock exchanges as per the Listing Regulations.
8. Hold the general meeting and have the Special resolution passed.
9. In the case of a listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Regulations.
10. Give notice in compliance with the provisions of section 64 of the Companies Act, 2013, of the Reconversion of stock of the company into fully paid shares, to the Registrar in Form SH – 7, within thirty days of the passing of the resolution. The Registrar will record the alteration in the memorandum of the company.
11. In the case of a listed company, forward to the concerned stock exchanges copies of all the notices sent by the company to its members with respect to the alteration of the conditions in the memorandum of association and six copies. Intimate stock exchange about alterations in memorandum and articles of the company within 24 hours of the occurrence of event. [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]
12. Issue necessary share certificates in exchange of stock certificates.
13. Enter the names of the persons into the register of members of the company to whom shares has been issued in exchange for the stock.
14. Make necessary alterations in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

Notice for Payment of Call on Defaulting Members and Forfeiture of Shares

According to Regulation 13 of the Table – F of Schedule – I, the Board may make calls upon the members in respect of any monies unpaid on their shares.

Regulation 17 of the Table-F of Schedule-I, says, in case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

Regulation 28 of Table-F of Schedule-I provides that if a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board of directors of the company may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

Regulation 29 of Table-F of Schedule-I lays down that the notice aforesaid shall –

- (a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
- (b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

Regulation 30 of Table-F of Schedule-I provides that if the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

Regulation 32 of Table-F of Schedule-I provides that a person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares. The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.

Procedure for Forfeiture of Shares

1. If a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
2. The board or committee thereof shall pass a resolution authorizing the forfeiture of share and issue of notice for this purpose.
3. The notice aforesaid shall:
 - name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
 - state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited. (Regulation 29 of Table-F of Schedule-I)
4. The notice must:
 - specify clearly the amount payable on account of unpaid call money as well as interest accrued, if any, and other expenses.
 - mention the day on or before which the amount specified ought to be paid, not be earlier than 14 days from the date of service of the notice.
 - contain an unambiguous statement to the effect that in the event of failure to pay the specified amount latest on the appointed day, the shares in respect of which the amount remains unpaid would be liable to be forfeited.
5. The notice of forfeiture as contemplated in regulation 28 of Table – F of Schedule – I must be served in accordance with the provisions of section 20 of the Companies Act 2013.

6. If the call money is not paid in response to such notice threatening forfeiture, the company may, at any time thereafter, before the payment required by the notice has been made, forfeit the shares by a resolution of the Board to that effect.
7. Publish a notice of forfeiture in newspapers so that the members of the public are made aware of the forfeiture and cautioned not to deal in the forfeited shares.
8. Inform the forfeiture of the shares to the concerned shareholders by registered post.
9. Regulation 33 of Table – F of Schedule – I provides for a verified declaration in writing to be issued under the signature of a director, manager or secretary of the company that a share in the company has been duly forfeited on a date stated in the declaration. The declaration so made shall be conclusive evidence of the facts stated therein as against all persons claiming to be entitled to the shares forfeited.
10. The fact of the forfeiture will be entered in the Register of Members and the name of the concerned shareholder as a member of the company will be deleted from the register.
11. In case of listed company, notify the Stock Exchange at which the securities of the Company are listed about such forfeiture of shares.

Sale, etc. of Forfeited Shares

1. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares. He shall remain liable to pay to the company all monies which were presently payable by him to the company in respect of the shares.
2. The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.
3. The Company may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
4. The company may receive the consideration, if any, given for the share on any sale or disposal thereof.
5. The transferee shall thereupon be registered as the holder of the share.
6. The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

CANCELLATION OF SHARES

According to clause (e) of Sub-section (1) of Section 61 of the Companies Act, 2013, a limited company having a share capital may, if so authorised by its articles, cancel its shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Sub-section (2) of Section 61 of the Act lays down that such cancellation of shares shall not be deemed to be a reduction of share capital.

Here the cancellation of shares means cancellation of shares of a particular unissued class of shares and not the paid up share capital.

Section 64 of the Act makes it obligatory on the part of a limited company having share capital, which has cancelled any share capital, to give notice thereof to the Registrar, within thirty days of the passing of the resolution, specifying the shares cancelled.

Procedure for Cancellation of Shares

1. To ensure that the articles of association of the company contain a provision authorising it to cancel its shares. In the absence of such a provision, the articles have first to be altered in accordance with the provisions of Section 14 of the Companies Act, 2013.
2. Convene and hold a Board meeting to –
 - (i) decide and pass a resolution in respect of the scheme of cancellation of shares of the company;
 - (ii) fix time, date and venue for holding general meeting (extraordinary or annual) of the company to pass an ordinary resolution or a special resolution, if so required by the articles for this purpose;
 - (iii) approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per Section 101 and 102 of the Act; and
 - (iv) to authorise the company secretary or any other competent officer of the company to issue notice of the general meeting on behalf of the Board of directors of the company.
3. In case of listed company, on the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of such cancellation of the shares of the company.
4. Issue notice of the general meeting as per provisions of the Companies Act to all the members, directors and auditors of the company.
5. In case of listed company, send notice of the general meeting along with the explanatory statement annexed to the notice to the concerned stock exchanges as per the Listing Regulations.
6. To hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.
7. In case of listed company, forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Regulations.
8. In case of cancellation resulting in alteration of articles file with the ROC, Form MGT – 14 along with a certified copy of the special resolution, the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution.
9. Give notice in compliance with the provisions of section 64 of the Companies Act, 2013, of the cancellation, to the Registrar in Form SH – 7, within thirty days of the passing of the resolution, along with the prescribed filing fee. The Registrar will record the alteration in the memorandum of the company.
10. Intimate stock exchange about alterations in memorandum and articles of the company within 24 hrs of the occurrence of event. [Refer regulation 30(6) of SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015]
11. Make necessary changes in all the copies of the memorandum of association of the company lying in the registered office of the company so that no unaltered copy is issued to any person.

SURRENDER OF SHARES

Surrender means to hand over; relinquish possession of, especially on compulsion or demand. The Companies Act does not contain any provision on surrender of shares. Table – F of Schedule – I also does not give power to a company to accept surrender of its shares; it contains no regulation on this subject.

But articles usually empower the companies to accept surrender of shares.

There is difference between surrender and forfeiture of shares. There is no reference in the Act to surrender of shares; but these have been admitted by the courts, upon the principle that they have practically the same effect as

forfeiture, the main difference being that one is a proceeding against an unwilling party and the other a proceeding taken with the assent of the shareholder who is unable to retain and pay future calls on the shares. Surrender is voluntary and forfeiture is due to breach of contract.

The surrender is good if it amounts to forfeiture. It is not open to a shareholder to surrender his shares at will, especially when he has to meet future calls, and it is not open to the company to accept a surrender of shares unless the act of the company can be brought within the rule relating to forfeiture of shares.

The Act permits forfeiture of shares on certain grounds; but to give an unlimited and wide power to a company to accept surrender of shares is opposed to the principle that a company cannot buy its own shares and to the principle that a company can reduce its capital only with the permission of the court and on such terms and conditions as the court may impose.

A surrender of shares releasing the shareholder from further liability in respect of the shares, is equivalent to a purchase of the shares by the company, and is therefore illegal, null and void. Thus, a surrender of shares is not valid merely because the articles of the company authorise the Board to accept surrender of shares, unless it can be shown that the surrender took place in circumstances, which would have justified forfeiture.

There can be no valid surrender of shares that are not fully paid except where shares are lawfully forfeited, as it involves reduction of capital requiring the sanction of the court. A surrender of shares amounts to a reduction of capital, which is unlawful unless sanctioned by the court.

Where a company's articles give the directors power to accept a surrender of shares, this power will be recognised as valid if it is used merely to avoid the formalities of forfeiture. Subject to the provisions allowing companies to acquire their own shares, a company cannot accept a surrender if the shares are not liable to forfeiture, so that such a surrender of partly paid shares would not relieve the shareholder from his uncalled liability; such a surrender would amount to an unauthorised purchase by the company of its own shares, or a reduction of capital without the court's sanction, and is invalid. It is, however, valid to accept the surrender of partly paid shares from an insolvent member and discharge liability for future calls thereon, if this represents bona fide compromise of the company's on him. The effect of a valid surrender is the same as forfeiture, provided the articles authorise it.

It is doubtful whether a company may accept a surrender of fully paid shares in exchange for the issue by the company of an equivalent nominal amount of fully paid shares.

There is a difference between surrender of shares and purchasing by a company of its own shares. A company cannot make any payment or give any valuable consideration for the surrender. This is because a surrender of shares in consideration of a payment in money or money's worth by the company is a purchase by it of its own shares and is *ultra vires* that is to say, unless confirmed by the court as a reduction of capital.

Like forfeiture, surrender also does not involve any payment out of the funds of the company. If the surrender were made in consideration of any such payment it would be neither more nor less than a sale, and open to the same objections as purchase by the company of its own shares. If it were accepted in a case when the company was in a position to forfeit the shares, the transaction would be perfectly valid.

However, surrender of shares to the company for consideration may be valid if the circumstances are very special, e.g. where the surrender is part of a compromise. A valid surrender of shares would not amount to buying by a company of its own shares.

REDUCTION OF SHARE CAPITAL

Sub-section (1) of Section 66 of the Companies Act, 2013 lays down procedure for reduction of share capital. A company limited by shares or a company limited by guarantee and having a share capital may, subject to confirmation by Tribunal on an application made by the Company, reduce its share capital in any way, by special resolution, and may –

- (i) Extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;

- (ii) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets; or
- (iii) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

On analyzing the provisions of Section 66 of the Act, we find the following factors have to be taken care of in effecting reduction in the share capital of a company:

- i) Passing of a special resolution by the company.
- ii) Confirmation of the reduction by Tribunal [The term “Tribunal” means the National Company Law Tribunal]

No such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

PROCEDURE FOR REDUCTION OF SHARE CAPITAL

In view of the provisions of the Section 66 of the Act and National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016, a company proposing to reduce its share capital is required to take the following procedural steps:

- 1) Convene and hold a Board meeting to –
 - i. approve the scheme of capital reduction by a resolution;
 - ii. fix time, date and venue for holding a general meeting of the company for passing a special resolution for reduction of share capital subject to confirmation by Tribunal as per provisions of Section 66 of the Act;
 - iii. Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per Section 102(1) of the Act; and
 - iv. Authorize the company secretary or some other competent officer to issue notice of the general meeting as approved by the Board.
- 2) Issue notice of the general meeting to all members, directors and auditors of the company.
- 3) Hold the general meeting and have the special resolution(s) passed.
- 4) File MGT-14 along with a certified true copy of the special resolution(s), copy of explanatory statement under Section 102 and copy of altered Memorandum of Association with the ROC within thirty days of the passing of the resolutions along with the prescribed filing fee.

Form of application or petition for Reduction of share capital under section 66

- 5) An application to the Tribunal to confirm a reduction of share capital of a company shall be in **Form No. RSC-1** and fee shall be, as prescribed in the Schedule of fee to the rules. [As per the Schedule fee is Rs. 5000.]
- 6) An application to confirm a reduction of share capital of a company shall be accompanied with –
 - i. the list of creditors duly certified by the Managing Director, or in his absence, by two directors, as true and correct, which is made as on a date not earlier than fifteen days prior to the date of filing of an application showing the details of the creditors of the company, class-wise, indicating their names, addresses and amounts owed to them;
 - ii. a certificate from the auditor of the company to the effect that the list of creditors referred to in clause (a) is correct as per the records of the company verified by the auditor;

- iii. a certificate by the auditor and declaration by a director of the company that the company is not, as on the date of filing of the application, in arrears in the repayment of the deposits or the interest thereon; and
 - iv. a certificate by the company's auditor to the effect that the accounting treatment proposed by the company for the reduction of share capital is in conformity with the accounting standards specified in section 133 or any other provisions of Act.
- 7) Copies of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees fifty for inspection and for taking extracts on payment of the sum of rupees ten per page to the company.

Issue of notice and directions by the National Company Law Tribunal.-

- 8) The Tribunal shall, within fifteen days of submission of the application, give notice, or direct that notice be given to -
- i. the Central Government, Registrar of Companies, in all cases, in **Form No. RSC-2**;
 - ii. the Securities and Exchange Board of India, in the case of listed companies in **Form No. RSC-2**;
 - iii. the creditors of the company, in all cases in **Form No. RSC-3**; seeking their representations and objections, if any.
- 9) The notice under clause (iii) of sub-rule shall be sent, within seven days of the direction given under that sub-rule or such other period as may be directed by the Tribunal, to each creditor whose name is entered in the list of creditors submitted by the company about the presentation of the application and of the said list, stating the amount of the proposed reduction of share capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor's name is entered in the said list, and the time within which the creditor may send his representations and objections.
- 10) The Tribunal shall along with directions under the sub-rule give directions for the notice to be published, in **Form No. RSC-4** within seven days from the date on which the directions are given, in English language in a leading English newspaper and in a leading vernacular language newspaper, both 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 and for uploading on the website of the company (if any) seeking objections from the creditors and intimating about the date of hearing.
- 11) The notice shall state the amount of the proposed reduction of share capital, and the places, where the aforesaid list of creditors may be inspected, and the time as fixed by the Tribunal within which creditors of the company may send their objections:
- 12) Provided that the objections, if any, shall be filed in the Tribunal within three months from the date of publication of the notice with a copy served on the company.
- 13) The company or the person who was directed to issue notices and the publication in the newspaper under this rule shall, as soon as may be, but not later than seven days from the date of issue of such notices, file an affidavit in **Form No. RSC-5** confirming the despatch and publication of the notice.
- 14) Where the Tribunal is satisfied that the debt or claim of every creditor has been discharged or determined or has been secured or his consent is obtained, it may dispense with the requirement of giving of notice to creditors or publication of notice under this rule or both.

Representation by Central Government, Registrar etc. under sub-section (2) of section 66.-

- 15) If the authorities or the creditors of the company to whom notice was given, desire to make any representation under sub-section (2) of section 66, the same shall be sent to the Tribunal within a period of three months from the date of receipt of notice and copy of such representation shall simultaneously be sent to the company and in case no representation has been received within the said period by the Tribunal it shall be presumed that they have no objection to the reduction.

Procedure with regard to representations and objections received.-

- 16) The company shall submit to the Tribunal, within seven days of expiry of period upto which representations or objections were sought, the representations or objections so received along with the responses of the company thereto.
- 17) The Tribunal may give such directions as it may think fit with respect to holding of any enquiry or adjudication of claims or for hearing the objection or otherwise.
- 18) At the hearing of the application, the Tribunal may, if it thinks fit, give such directions as may deem proper with reference to securing the debts or claims of creditors who do not consent to the proposed reduction, and the further hearing of the petition may be adjourned to enable the company to comply with such directions.

Order on application and Minutes thereof:-

- 19) Where the Tribunal makes an order confirming a reduction, the order confirming the reduction and approving the minutes may include such directions or terms and conditions as the Tribunal deems fit.
- 20) The order confirming the reduction of share capital and approving the minute shall be in **Form No. RSC - 6** on such terms and conditions as may be deemed fit.

The Certificate issued by the Registrar under sub-section (5) of section 66 shall be in **Form No. RSC -7**.

ANNEXURES

SPECIMEN OF ORDINARY RESOLUTION FOR INCREASING THE AUTHORISED SHARE CAPITAL OF THE COMPANY

“RESOLVED THAT pursuant to Section 61(1)(a) and other applicable provisions, if any, of the Companies Act, 2013 and Article ... of the Articles of Association of the company, the Authorised Share capital of the company be and is hereby increased from ` 50,00,000 (Rupees fifty lakh) divided into 5,00,000 (five lakh) equity shares of ` 10 each to ` 5,00,00,000/- (Rupees five crore) divided into 50,00,000 (fifty lakh) equity shares of ` 10 (Rupees ten) each by creation of 45,00,000 equity shares of ` 10 each ranking *pari passu* in all respect with the existing equity shares.”

(Note: If the Articles of Association prescribe that a special resolution is required for increase of authorized share capital, pass the resolution as a special resolution.)

Explanatory Statement

The directors of the company have felt that for profitable working of the company, the company needs more funds in the form of equity share capital. The present authorised share capital of the company is only ` 50,00,000 (Rupees fifty lakhs) divided into 5,00,000 (five lakh) equity shares of ` 10/- (Rupees ten) each and the entire authorised share capital has been issued, subscribed and paid up. The Board, therefore, decided that the authorised share capital of the company be increased to ` 5,00,00,000 (Rupees five crore) divided into 50,00,000 (fifty lakh) equity shares of ` 10/- (Rupees ten) each.

Hence the proposed resolution is recommended for consideration of and approval by the shareholders of the company.

None of the directors is concerned or interested in the proposed resolution.

SPECIMEN OF THE RESOLUTION FOR CONSOLIDATION OF SHARES

(1) Ordinary Resolution

“RESOLVED THAT pursuant to Section 61(1)(b) and other applicable provisions, if any, of the Companies Act, 2013, and Article... of Articles of Association of the company, all the 5,00,00,000 (five crore) equity shares of ` 5 (Rupees five) each of the company be and are hereby consolidated into two crore and fifty lakh (2,50,00,000) equity shares of ` 10/- (Rupees ten) each;

“RESOLVED FURTHER THAT all the present shareholders holding in all 2,00,00,000 (two crore) issued, subscribed and fully paid equity shares of ` 5 (Rupees five) each be issued, in lieu of their present shareholding, the number of fully paid consolidated equity shares of ` 10 (Rupees ten) each;

“RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect the foregoing resolution, including recall of the existing share certificates, issue of new share certificates in lieu of the existing issued share certificates in terms of the foregoing resolutions and in accordance with the applicable provisions of the Companies Act, 2013 read with Companies (Share Capital and Debentures) Rules, 2014.”

(2) Special Resolution

“RESOLVED THAT as a consequence of consolidation of the equity shares of the company, clause V (share capital clause) of the memorandum of association of the company be and is hereby substituted with the following:

“V. The authorised share capital of the company is ` 25,00,00,000 (Rupees twenty-five crore) divided into two crore and fifty lakh (2,50,00,000) equity shares of ` 10/- (Rupees ten) each.”

Explanatory Statement

In order to maintain uniformity in the nominal value of the company’s equity shares with the nominal value of equity shares of other companies, the Board of directors of the company, at its meeting held on resolved to take steps for consolidation of the company’s equity shares of ` 5/- (Rupees five) each into shares of ` 10/-(Rupees ten) each.

Therefore, the proposed resolutions are commended to the shareholders of the company for their consideration and approval.

The directors of the company are interested in the proposed resolutions to the extent of their respective shareholdings in the company.

SPECIMEN OF THE RESOLUTION FOR SUB-DIVISION OF SHARES

(1) Ordinary Resolution

“RESOLVED THAT pursuant to Section 61(1)(d) and other applicable provisions, if any, of the Companies Act, 2013, and Article... of Articles of Association of the company, all the 5,00,000 (five lakh) equity shares of ` 100 (Rupees hundred) each of the company be hereby sub-divided into fifty lakh (50,00,000) equity shares of ` 10/- (Rupees ten) each;

“RESOLVED FURTHER THAT all the present shareholders holding in all 2,00,000 (two lakh) issued, subscribed and fully paid equity shares of ` 100 (Rupees hundred) each be issued, in lieu of their present shareholding, the number of fully paid consolidated equity shares of ` 10 (Rupees ten) each of the aggregate value equal to the amount paid by each shareholder on his/her existing fully paid equity shares of ` 100/- (Rupees hundred) each;

“RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect the foregoing resolution, including recall of the existing share certificates, issue of new share certificates in lieu of the existing issued share certificates in terms of the foregoing resolutions and in accordance with the applicable provisions of the Companies Act, 2013 read with Companies (Share Capital and Debentures) Rules, 2014.”

(2) Special Resolution

“RESOLVED THAT as a consequence of sub-divison of the equity shares of the company, clause V (share capital clause) of the memorandum of association of the company be and is hereby substituted with the following:

“V. The authorised share capital of the company is ` 5,00,00,000 (Rupees five crore) divided into fifty lakh (50,00,000) equity shares of ` 10/- (Rupees ten) each”

Explanatory Statement

In order to maintain uniformity in the nominal value of the company’s equity shares with the nominal value of equity shares of other companies, the Board of directors of the company, at its meeting held on resolved to take steps for sub-division of the company’s equity shares of ` 100/- (Rupees hundred) each into equity shares of ` 10/ - (Rupees ten) each.

Therefore, the proposed resolutions are commended to the shareholders of the company for their consideration and approval.

The directors of the company are interested in the proposed resolutions to the extent of their respective shareholdings in the company.

SPECIMEN OF THE RESOLUTION FOR CONVERSION OF SHARES INTO STOCK

(1) Ordinary Resolution

“RESOLVED THAT pursuant to Section 61(1)(c) and other applicable provisions, if any, of the Companies Act, 2013, and Article of Articles of Association of the company, out of the total authorized share capital of ` 10 Crore, 10,00,000 (ten lakh) fully paid equity shares of ` 10 (Rupees ten) each of the company bearing distinctive Nos. 1 to 10,00,000 (both inclusive), be and are hereby converted into stock;

“RESOLVED FURTHER THAT all the shareholders of the shares bearing distinctive Nos.1 to 10,00,000 be and are hereby authorised to surrender their share certificates to the company and obtain from the company stock certificates of the desired value, on an application addressed to the Board of directors of the company at the company’s registered office;

“RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect the foregoing resolutions, including recall of the existing share certificates, issue, on specific requests from the shareholders, of stock certificates in lieu of the surrendered share certificates in terms of the foregoing resolutions and removal of the names of those shareholders from the register of members of the company, who surrender their share certificates and desire to have stock issued in lieu thereof.”

(2) Special Resolution

“RESOLVED THAT consequent upon conversion of equity shares of the company into stock, clause V (share capital clause) of the memorandum of association of the company be and is hereby substituted with the following:

“V. The Authorised Share Capital of the Company is ` 10,00,00,000 (Rupees ten crore) divided into ninety lakh (90,00,000) equity shares of ` 10/- (Rupees ten) each and stock of the aggregate value of ` 1,00,00,000/- (Rupees one crore)”

Explanatory Statement

Members of the company holding shares bearing distinctive Nos. 1 to 10,00,000 (inclusive) have requested the company for the issue of stock in lieu of the shares held by them in the company. They have made the request on the ground that handling stock is easier than shares, for which they are required to keep a number of share certificates in safe custody and every time they transfer certain shares or buy certain shares they have to send share transfer forms and the relevant share certificates and other related documents to the company involving the risk of their being lost/pilfered in transit. This process also involves long delays on account of the unending paper work in the company’s office.

Responding to the demand of the members, the Board of directors of the company, at their meeting held on..... considered the matter in detail and eventually resolved to accede to the request of the members of the company and passed the necessary resolution to bring the matter before the shareholders of the company for their consideration and approval, with or without modifications.

Therefore, the proposed resolution is before the shareholders of the company for their consideration and approval. None of the directors of the company is concerned or interested in the proposed resolution.

SPECIMEN OF THE RESOLUTION FOR RE-CONVERSION OF STOCK INTO SHARES

(1) Ordinary Resolution

“RESOLVED THAT (pursuant to Section 61(1)(c) and other applicable provisions, if any, of the Companies Act, 2013, and article of articles of association of the company, stock of the aggregate value of ` 1,00,00,000/ - (Rupees one crore) be and is hereby converted into 10,00,000 (ten lakh) fully paid equity shares of ` 10 (Rupees ten) each of the company bearing distinctive Nos. 1 to 10,00,000 (both inclusive) thereby increasing the

number of equity shares in the authorised share capital clause (Clause V) of the company's memorandum of association by ten lakh equity shares of ` 10/- (Rupees ten) each and deleting the stock of the aggregate value of ` 1,00,00,000/- (Rupees one crore) from the share capital clause (Clause V) of the memorandum of association of the company;

“RESOLVED FURTHER THAT all the stockholders of the aggregate value of ` 1,00,00,000/- (Rupees one crore) be and are hereby authorised to surrender their stock certificates to the company and obtain from the company share certificates to the extent of the nominal value of the stock held by them, on an application addressed to the Board of directors of the company at the company's registered office;

“RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorised to take all the necessary steps for giving effect to the foregoing resolution, including recall of the existing stock certificates, issue, on specific requests from the stockholders, share certificates in lieu of the surrendered stock certificates in terms of the foregoing resolutions and entry in the register of members of the company, of the names of those stockholders, who surrender their stock certificates and desire to have shares issued in lieu thereof.

(2) Special Resolution

“RESOLVED THAT consequent upon re-conversion of stock into fully paid equity shares of the company, clause V (share capital clause) of the memorandum of association of the company be and is hereby substituted with the following:

“V. The authorised share capital of the company is ` 10,00,00,000 (Rupees ten crore) divided into one crore (One crore) equity shares of ` 10/- (Rupees ten) each”

Explanatory Statement

On the company had issued stock of the aggregate value of ` 1,00,00,000/- (Rupees one crore) to the shareholders who had held 10,00,000 (ten lakh) fully paid equity shares of ` 10/- (Rupees ten) each of the company.

All the stockholders of the company have now requested the company for re-conversion of their stock into fully paid equity shares of ` 10/- (Rupees ten) each of the company.

In response to the demand of the stockholders, the Board of directors of the company, at their meeting held on considered the matter in detail and eventually resolved to accede to the request of the stockholders of the company and passed the necessary resolution to bring the matter before the shareholders of the company for their consideration and approval, with or without modifications.

Therefore, the proposed resolutions are before the shareholders of the company for their consideration and approval.

None of the directors of the company is concerned or interested in the proposed resolution.

SPECIMEN OF BOARD RESOLUTION FOR SERVING NOTICE REQUIRING A DEFAULTING MEMBER TO PAY CALL OR INSTALLMENT THEREOF WITHIN STIPULATED TIME

“RESOLVED THAT notice be given in accordance with articles and of the Articles of Association of the company to all those members of the company, who have not paid the second call amount (as per list placed on the table and initialled by the chairman of the meeting for the purpose of identification) on equity shares held by them in the company till the day of 2013, which date was fixed and notified for payment of the call, calling upon them to pay such call amount on or before the day of 2013 together with interest at the rate of per cent per annum from the following day of the said date upto the date of actual payment and stating that in the event of non-payment of the call money on or before the said date, the shares will be liable to forfeiture; and

“RESOLVED FURTHER THAT Shri..... Company Secretary, be and is hereby authorised to serve, at the earliest possible date, the notice on the defaulting members of the company in terms of the foregoing resolution by registered post with acknowledgement due.

**SPECIMEN OF THE NOTICE TO A DEFAULTING MEMBER REQUIRING HIM TO PAY CALL OR
INSTALLMENT THEREOF WITHIN STIPULATED PERIOD OF TIME**

Name of the Company

Regd.Off. Address

Ref. No.

Dated

Registered with AD

Shri

Dear Sir/Madam,

**Subject : Notice requiring to pay the second call of ` per share due on equity shares
of the company allotted to you.**

Pursuant to Articles and of the Articles of Association of the company, and on the authority of the resolution of the Board of directors of the company passed at its meeting held on , notice was given to you requiring you to pay the second call of ` on all partly paid equity shares of the company, on or before the Day of 2013, but the said amount has till the date of this notice remained unpaid.

Under the authority of the Board of directors of the company, we hereby call upon you to pay the said second call of ` per share on equity shares held by you in the company on or before and in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

We trust you will honour your obligation under the Articles of Association of the company within the stipulated time.

Thanking you,

Yours faithfully

for Limited

(Company Secretary)

**SPECIMEN OF BOARD RESOLUTION FORFEITING SHARES FOR NON-PAYMENT
OF CALL ON EQUITY SHARES**

“RESOLVED THAT pursuant to Article..... of the Articles of Association of the company, the undermentioned equity shares in the capital of the company be and are hereby forfeited for non-payment of the second and final call of ` per share payable on or before.... 2013, of which due notice was served upon the defaulting members on 2013 by registered post with acknowledgement due:

No. of Shares	Dist. Nos.	Names of the Registered Holders

**DRAFT RESOLUTION FOR FORFEITURE OF SHARES ON NON-PAYMENT OF
ALLOTMENT MONEY AS PER FINAL NOTICE**

The Board was informed that pursuant to the resolution passed in the meeting of the Board of directors held on 21.10.2013, Final Notice for payment of Allotment Money dated 21.10.2013 (a copy was placed on the table) was sent to 2489 shareholders of the company by registered post for payment of Allotment Money on 74880 equity shares allotted on conversion of 14% Secured Fully Convertible Debentures of ` 120/- each and 5,50,909 Rights equity shares. 2431 shareholders have not complied with the requirements of this final notice i.e. not remitted the outstanding Allotment Money due on the shares allotted to and held by them, on or before the last date of 21.11.2013 fixed for the purpose and even till 31.12.2013. No Allotment Money was outstanding on shares held by the directors/ promoters of the company.

Two lists of such shareholders were placed on the table and brief summary was given hereunder. Details of shares and shareholders:

No. of Shareholders	No. of Shares	Allotment Money Due (`)		
		Capital	Premium	Total
487	69,032	3,35,520.00	6,71,040.00	10,06,560.00
1,944	5,45,589	27,26,401.00	40,89,601.50	68,16,002.50

Article 66 of the Articles of Association of the Company provides that if the requirements of such notice as aforesaid are not complied with in respect of the shares for which such notice was given, such shares shall be forfeited by a resolution of the Board of directors. Such forfeiture shall include all dividends declared but not actually paid on such forfeited shares before forfeiture.

Pursuant to Article a notice of the resolution forfeiting the shares shall be given to such shareholders and an entry of the forfeiture with the date thereof shall be made in the Register of Members forthwith.

As per Article, the forfeited shares shall be deemed to be the property of the company and such forfeited shares may be sold or issued or otherwise disposed off in such manner as the directors shall approve. However, pursuant to Article, the directors may annul forfeiture of any share(s) before disposal thereof.

“RESOLVED that pursuant to the provisions of Article 66 of the Articles of Association of the Company and consequent upon the shareholders having not complied with the requirements of the Final Notice for Payment of Allotment Money dated 21.10.2013 sent under registered post i.e. not remitted the Allotment Money due on such equity shares together with interest on or before 21.11.2010, the last date fixed for payment, the 69,032 equity shares of ` 10/- each allotted on 23rd July, 2011 and 23rd January, 2012 on conversion of 14% Secured Fully Convertible Debentures of ` 120/- each in terms of the prospectus dated 28.10.2013 and the 5,45,589 equity shares of ` 10/- each allotted on 23.7.2011 on Rights basis in terms of the Letter of Offer dated 29.4.2010 as per particulars whereof contained in the two lists placed on the table, be and are hereby forfeited.

RESOLVED further that necessary entry, as required under Article 67 of the Articles of Association of the Company be made in the Register of members and the notice of this resolution of forfeiture be sent to the such members individually under registered post and be notified to the Stock Exchanges at Mumbai, Kolkata, Delhi and Kanpur where the equity shares of the company are listed and that Mr. President Finance and Mr. Company Secretary be and are hereby authorised severally to sign and send requisite notice and to do all acts, deed and things in connection therewith or incidental thereto.”

SPECIMEN OF BOARD RESOLUTION APPROVING SALE OF FORFEITED SHARES

“RESOLVED THAT equity shares of ` each bearing Distinctive Nos. to....., both inclusive, previously registered in the name of Shri and forfeited on..... as per declaration duly signed by the Company Secretary and placed on the table, be and are hereby sold to Shri for ` per share and that, upon payment of that sum, an equity share certificate of equity shares credited with ` paid-up per share be issued to the said Shri..... accordingly.”

SPECIMEN OF THE SPECIAL RESOLUTION FOR CANCELLATION OF SHARES

“RESOLVED THAT pursuant to Section 61(1)(e) and other applicable provisions, if any, of the Companies Act, 2013, and article.... of the articles of association of the company, the authorised share capital of the company be and is hereby reduced from ` 20,00,00,000/- (Rupees twenty crore) divided into 2,00,00,000 (Two crore) equity shares of ` 10/- (Rupees ten) each to ` 10,00,00,000 (Rupees ten crore) divided into one crore (1,00,00,000) equity shares of ` 10/- (Rupees ten) each by cancelling one crore (1,00,00,000) equity shares of ` 10/- (Rupees ten) each, which have not been taken or agreed to be taken by any person and consequently Clause V (share capital clause) of the memorandum of association of the company be and is hereby substituted with the following:

“V. The authorised share capital of the company is ` 10,00,00,000 (Rupees ten crore) divided into one crore (1,00,00,000) equity shares of ` 10/- (Rupees ten) each.”

Explanatory Statement

The company was incorporated on with an authorised share capital of ` 20,00,00,000/- (Rupees twenty crore) divided into 2,00,00,000 (Two crore) equity shares of ` 10/- (Rupees ten) each. The present issued, subscribed and paid-up share capital of the company is ` 7,00,00,000/- (Rupees seven crore) divided into 70,00,000 (Seventy lakh) equity shares of ` 10/- (Rupees ten) each. The company has no proposal at hand which would require additional capital. The Board of directors of the company, at its meeting held on had resolved to reduce the authorised share capital of the company by cancelling one crore (1,00,00,000) equity shares of ` 10/- (Rupees ten) each, which have not been taken or agreed to be taken by any person. Therefore, the proposed special resolution is before the shareholders of the company for their consideration and approval.

None of the directors of the company is interested in the proposed resolution.

SPECIMEN OF REGULATION IN ARTICLES REGARDING SURRENDER OF SHARES

The Directors may, subject to the provisions of the Act, accept a surrender of any shares from or by any member desirous of surrendering them on such terms as they think fit.

The phrase “surrender of shares” means the surrender to the company on the part of the registered holder of the shares already issued. Power to surrender shares does not include power to renounce newly issued shares. A shareholder whose shares are forfeited ceases to be a member but a shareholder who surrenders his shares does not cease to be a member and can, therefore, be put on the list of contributories.

The Board may accept a surrender of shares and will have to approve it by its resolution. If the Board decides to reissue the surrendered shares, the Board will also give approval to the reissue or delegate that power to any director or officer of the company. The same procedure as in the case of reissue of forfeited shares will be followed.

SPECIMEN OF THE SPECIAL RESOLUTION FOR REDUCTION OF SHARE CAPITAL OF A COMPANY

“RESOLVED THAT pursuant to Section 66(1) and other applicable provisions, if any, of the Companies Act, 2013, article of articles of association of the company and subject to confirmation by the National Company Law Tribunal at and subject to such other approvals, consents, permissions or sanctions of

any other authority, body or institution (hereinafter collectively referred to as “the concerned authorities”) as may be required, and subject to such other conditions or guidelines, if any, as may be prescribed or stipulated by any of the concerned authorities, from time to time, while granting such approvals, consents, permissions or sanctions, the subscribed, issued and paid up equity share capital of the company be reduced from ` 50,00,00,000 (Rupees fifty crore) divided into 5,00,00,000 (Five crore) equity shares of ` 10 each to ` 25,00,00,000 (Rupees twenty-five crore) divided into 5,00,00,000 (Five crore) equity shares of ` 5 each, and the surplus amount, i.e., ` 25,00,00,000 (Rupees twenty-five crore) , being in excess of the wants of the company be paid to the shareholders.”

Explanatory Statement

As the members are aware, the company has a cash surplus which has resulted from the recent restructuring including merger of the erstwhile Ltd. with the company. The Board is of the view that the present economic environment in the country is not conducive to expansion or diversification. The Board of directors of the company discussed the matter in detail at its meeting held on and resolved to return the surplus cash to the members in recognition of their dedication, consistency and utmost faith reposed by them in the management of the company.

Hence the proposed special resolution is for consideration of and approval by the members of the company.

Directors of the company are interested in the proposed resolution to the extent of their respective shareholdings in the company.

LESSON ROUND UP

- Section 61 of the Act deals with different modes of alteration of share capital of a company. Any modes of alteration of share capital must be authorised by the article of the company. In the absence of an express provision in the article, no alteration of the capital in any of the specified modes can be done. It should therefore, be ensured, before embarking upon passing of a resolution to alter the capital, that there is an express provision in the articles authorizing the company to alter its share capital.
- The alteration of share capital in any of the ways specified above requires an ordinary resolution to be passed at a general meeting of the company, unless the Articles otherwise provide.
- A company may alter its share capital by consolidation or division of all or any of its shares into shares of larger denominations than its existing shares. To consolidates means to bring together (separate parts) into a single or unified whole.
- A company may sub-divide its share capital if so authorised by articles of association. It is done by an ordinary resolution passed at a general meeting. Sub-division is the method by which the nominal value of each share is reduced to a smaller amount. For example one share of ` 100 may be subdivided into 10 shares of ` 10 each. However the total amount of authorised share capital remains unaltered. Such a change is commonly called a share split. It is made by a company to widen the ownership of its shares.
- Section 14 of the Companies Act, 2013, provides the power to increase the share capital. if the increase of share capital results in alteration of articles of association special resolution is required, otherwise ordinary resolution is to be passed.
- When a number of shares are converted into a single holding with a nominal value equal to that of the total value of the shares, it is called conversion of shares into stock. Stock is the aggregate of the fully paid-up shares legally consolidated and portions of which aggregate may be transferred or split up into fractions of any amount without regard to the original nominal value of shares.
- Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the registrar, all the provisions of this Act which are applicable to shares only, shall cease to apply on so much of the share capital as is converted into stock.

- A forfeited share is a partly paid share in a company that are forfeited because the shareholder has failed to pay a subsequent part or final payment; a share to which the right is lost by the shareholder who has defaulted in paying call money.
- According to clause (e) of sub-section (1) of section 61 of the Companies Act,2013, a limited company having a share capital may, if so authorised by its articles, cancel its share which, at the date of passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares capital by the amount of the shares so cancelled.
- Surrender means to hand over; relinquish possession of, especially on compulsion or demand. The Companies Act does not contain any provision on surrender of shares.
- The provision relating to reduction of capital is not yet notified under Companies Act,2013 and according the procedure relating to reduction is dealt under Companies Act,1956.
- A company limited by the shares or a company limited by guarantee and having share capital can, by passing special resolution and subject to confirmation by the Tribunal on petition, reduce its share capital. In exercising its power the Tribunal will have due regard to the interests of creditors, who may consent or object to the reduction.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)

1. Write the Board resolution/resolution in general Meeting for:
 - (a) Increasing the authorised share capital of the company
 - (b) For consolidation of shares
 - (c) For forfeiture of shares
2. Explain the procedure for Re- conversion of stock in to fully paid shares.
3. Draft a Board Resolution of sale of Forfeited shares.
4. Explain the procedure for cancellation of shares.
5. What are the different modes of altering share capital of a company? State the procedure for reduction of share capital of a company.

Lesson 5

Issue and Redemption of Debentures and Bonds

LESSON OUTLINE

- Debentures
- Types of debentures
- Conditions for issue of Secured debentures
- Debenture Redemption Reserve
- Debenture Trustee
- Debenture Trust Deed
- Issue and Listing of Non Convertible Debt instruments
- Issue of Convertible Debt instruments
- Annexure
- Lesson Round UP
- Self Test Questions

LEARNING OBJECTIVES

The issue and redemption of Debentures are regulated by section 71 of Companies Act, 2013 read with Rule 18 of Companies (Share Capital and Debentures) Rules, 2014. In addition, in case of Issue and listing of non-convertible debt Instruments, the provisions of SEBI (Issue and Listing) of Debt Securities Regulations 2008 and in case of convertible debt Instruments SEBI (ICDR) Regulations, 2009 are to be complied with.

After reading this lesson you will be able to understand the procedural aspects of debt securities including convertible and non-convertible Instruments.

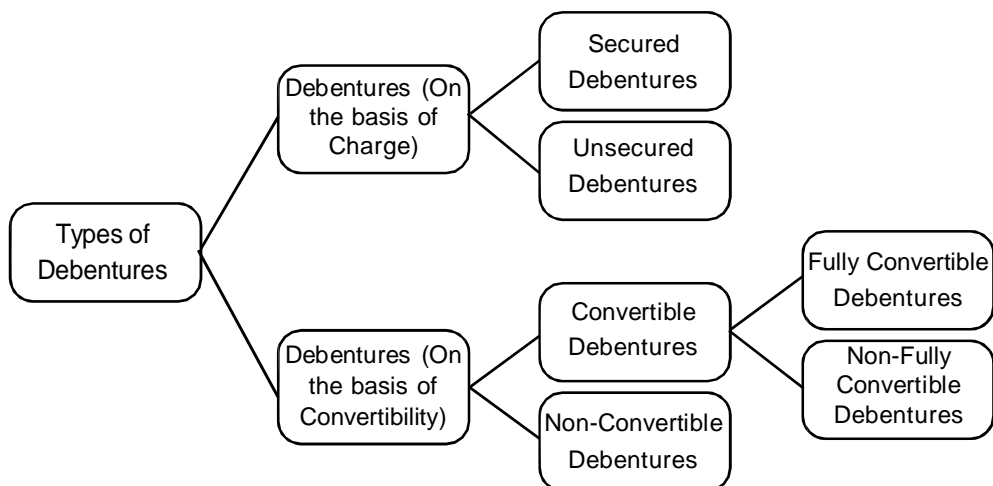
DEBENTURES

A debenture is an instrument of debt executed by the company acknowledging its obligation to repay the sum at a specified rate and also carrying an interest. It is one of the methods of raising the loan capital of the company. A debenture is thus like a certificate of loan or a loan bond evidencing the fact that the company is liable to pay a specified amount with interest and although the money raised by the debentures becomes a part of the company's capital structure, it does not become share capital.

As per Section 2(30) of the Companies Act 2013 "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

The debentures in a company shall be movable property transferable in the manner provided by the articles of the company according to section 44.

Types of Debentures



On the basis of charge: The section 2(30) of the Companies Act 2013 clarifies that the debentures can be secured or unsecured.

(a) Secured debentures: Where debentures are secured by a mortgage or a charge on the property of the company, they are called secured debentures. Debentures that are secured by a mortgage of the whole or part of the assets of the company are called mortgage debentures or secured debentures. The mortgage may be one duly registered in the formal way or one which is secured by the deposit of title deeds in case of urgency. If the issuer defaults in the repayment of principal or payment of interest, his assets can be sold to repay the liability to the investors.

(b) Unsecured debentures: Where they are not secured by any mortgage or charge on any property of the company they are said to be naked or unsecured debentures. These Debentures do not carry any charge on the assets of the company. The holders of such debentures do not therefore have the right to attach particular property by way of security as to repayment of principal or interest. If the issuer defaults in the repayment of principal or payment of interest, the investor has to be along with the unsecured creditors of the company.

On the basis of convertibility: the section 71(1) of the Companies Act 2013 a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. Thus on the

basis of convertibility, debentures can be convertible and non convertible debentures. Convertible debentures can be fully convertible or partly convertible.

(a) Convertible Debentures: Where the debentures are convertible, partly or wholly, into the shares of a company after a specified time, either as a result of exercise of option or in terms of the issue, they are called convertible debentures. Convertible debentures can be of following two types:

(i) Fully Convertible Debentures (FCDs): These are convertible into equity shares of the company with or without premium as per the terms of the issue, on the expiry of specified period or periods. The tenure of the convertible securities of the issuer shall not exceed 18 months from the date of their allotment. Interest will be payable on these debentures upto the date of conversion as per terms of the issue.

(ii) Partly Convertible Debentures (PCDs): These may consist of two kinds namely - convertible and non-convertible. The convertible portion is to be converted into equity shares at the expiry of specified period. However, the non convertible portion is redeemed at the expiry of the stipulated period. If the conversion takes place at or after 18 months, the conversion is optional at the discretion of the debenture holder.

BONDS

Bonds are typically issued by financial institutions, government undertakings and large companies. The interest rate is assured and is paid at a fixed interval. On maturity, the principal is repaid. Bond is a form of loan. The holder of the bond is the lender and the issuer of the bond is the borrower. Bonds are issued to fund long-term capital expenditure needs. As per Section 2(30) of the Companies Act 2013 “debenture” includes bonds. Therefore all the provisions applicable for debentures given in the Companies Act 2013 and other relevant statutes are applicable for bonds also.

Types of Bonds

Some of the types of bonds issued in the Indian markets are given below:

- Deep discount bonds, also known as zero-coupon bonds, are bonds wherein there is no interest or coupon payment and the interest amount is factored in the maturity value.
- Corporate bonds are issued by companies and offer interest rates higher than bonds issued by public sector units and other financial institutions. The interest rate on these bonds is governed by their credit rating and higher the rating, lower is the interest rate offered by them.
- Sovereign bonds are issued by the Reserve Bank of India. These can be referred to as low-risk or even risk-free bonds.
- Convertible bonds are another category wherein the bond holder has an option to convert the bonds into equity after a fixed tenor. These may be fully or partially convertible where only a part is converted and the other part matures.

ISSUE OF DEBENTURE

- Section 71(1) of the Companies Act 2013 specifies that any company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption.
- The debentures can be issued in the same manner as shares in a company. But unlike shares, debentures can be issued at a discount or at a premium. The Companies Act, 2013 places no restriction in this regard.

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- Debentures can be issued by any type of company- one person company, small company, private company public company or listed company.
- Debentures cannot have voting rights.
- A public company has to appoint debenture trustee before the issue of debentures.
- Any company can issue secured or unsecured debentures.
- For secured debentures conditions for issue of secured debentures under the Companies Act 2013, have to be followed. Debenture trustee has to be appointed and the trust deed in Form No. SH-12 has to be executed.
- Any company can issue debentures which are convertible or non-convertible.
- For convertible debentures, a special resolution should be passed at a general meeting.
- A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue. Interest payable on them is a debt and can be paid out of capital. There is no ceiling, minimum or maximum, for the rate of interest payable on debentures.
- Where debentures are issued by a company, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.
- Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon. **(Notified w.e.f. 1st June, 2016)**
 - If any default is made in complying with the order of the Tribunal under this section, 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 two lakh rupees but which may extend to five lakh rupees, or with both. **(Notified w.e.f. 1st June, 2016)**
- A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.
- For issue and listing of non-convertible debt securities, Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 has to be followed.
- For issue and listing of convertible debt securities, provisions mentioned in Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 has to be followed.

Section 71(2) states that no company shall issue any debentures carrying any voting rights.

CONDITIONS FOR ISSUE OF SECURED DEBENTURES

Section 71(3) states that a company may issue secured debentures subject to terms and conditions as prescribed. According to Rule 18(1) of the Companies (Share Capital and Debentures) Rules, 2014, the company shall not issue secured debentures, unless it complies with the following conditions, namely:-

- (a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue :

Provided that the following classes of Companies may issue secured debentures for a period exceeding ten years but not exceeding thirty years,

- (i) Companies engaged in setting up of infrastructure projects;
- (ii) 'Infrastructure Finance Companies' as defined in clause (viiia) of sub-direction (1) of direction 2 of Non-Banking Financial (Non-deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007;

- (iii) 'Infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011;
 - (iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years.
- (b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company or its subsidiaries or its holding company or its associate companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;
- (c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders ; and
- (d) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on –
- (i) any specific movable property of the company; or its holding company or subsidiaries or associate companies or otherwise;
 - (ii) any specific immovable property wherever situate, or any interest therein:
- Provided that in case of a non-banking financial company, the charge or mortgage under sub- clause (i) may be created on any movable property :
- Provided further that in case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge under this sub-rule shall not apply:
- Provided also that in case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage under this sub-rule may also be created on the properties or assets of the holding company.

DEBENTURE REDEMPTION RESERVE

Section 71(4) states that where debentures are issued by any company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

Rule 18(7) states that the company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below-

- (a) the Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;
- (b) the company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:-
 - (i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.
 - (ii) For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1997, 'the adequacy' of DRR will be 25% of the value of outstanding debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

However, where a company intends to redeem its debentures, prematurely, it may provide for transfer of such amount in Debenture Redemption Reserve as is necessary for redemption of such debentures even if it exceeds the limits specified.

- (iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of outstanding debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities), Regulations 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of outstanding debentures.
- (c) every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-
 - (i) in deposits with any scheduled bank, free from any charge or lien;
 - (ii) in unencumbered securities of the Central Government or of any State Government;
 - (iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;
 - (iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;
 - (v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen per cent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;
- (d) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.
- (e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

DEBENTURE TRUSTEE

A debenture trustee means a trustee of a trust deed for securing any issue of debentures of a body corporate. Section 71(5), specifies that no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred (500) for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees.

The conditions governing the appointment of debenture trustees under sub-section (5) of section 71 are prescribed under Rule 18(2) of the Companies (Share Capital and Debentures) Rules, 2014.

- (a) The names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;
- (b) Before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures;
- (c) A person shall not be appointed as a debenture trustee, if he-
 - (i) beneficially holds shares in the company;
 - (ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

- (iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
 - (iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
 - (v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
 - (vi) has any pecuniary relationship with the company amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
 - (vii) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel
- (d) The Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act: Provided that where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.
- (e) Any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting.

To act as debenture trustee, the entity should either be a scheduled bank carrying on commercial activity, a public financial institution, an insurance company, or a body corporate. The entity should be registered with SEBI to act as a debenture trustee. In India, the issuer pays to the Debenture Trustee. Debenture Trustees are regulated by SEBI. The SEBI (Debenture Trustees) Regulations, 1993 govern the Debenture Trustees and provide for eligibility criteria for registration of Debenture Trustees, monitoring and review, registration, Code of Conduct, procedure of action in case of defaults, avoidance of conflict of interest and inspection of Debenture Trustees by SEBI, amongst other things.

(9) Nothing contained in the rule shall apply to any amount received by a company against issue of commercial paper or any other similar instrument issued in accordance with the guidelines or regulations or notification issued by the Reserve Bank of India.

(10) In case of any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations or directions issued by the Reserve Bank of India, the provisions of this rule shall not apply unless otherwise provided in such Scheme or regulations or directions.

(11) Nothing contained in this rule shall apply to rupee denominated bonds issued exclusively to overseas investors in terms of AP (DIR Series) Circular No. 17 dated September 29, 2015 of the Reserve Bank of India.

Duties of Debenture Trustee

Section 71(6) of the Companies Act, 2013 says that a debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances.

Rule 18(3) states that it shall be the duty of every debenture trustee to –

- (a) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;
- (b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;

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- (c) call for periodical status or performance reports from the company;
- (d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee;
- (e) appoint a nominee director on the Board of the company in the event of –
 - (i) two consecutive defaults in payment of interest to the debenture holders; or
 - (ii) default in creation of security for debentures; or
 - (iii) default in redemption of debentures.
- (f) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;
- (g) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;
- (h) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;
- (i) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;
- (j) do such acts as are necessary in the event the security becomes enforceable;
- (k) call for reports on the utilization of funds raised by the issue of debentures-
- (l) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;
- (m) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;
- (n) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.

Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders. **(Notified w.e.f. 1st June, 2016)**

Some of the obligations of Debenture Trustees provided in the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 are –

- i) The debenture trustee shall be vested with the requisite powers for protecting the interest of holders of debt securities including a right to appoint a nominee director on the Board of the issuer in consultation with institutional holders of such securities.
- ii) The debenture trustee shall carry out its duties and perform its functions under these regulations, the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, the trust deed and offer document, with due care, diligence and loyalty.
- iii) The debenture trustee shall ensure disclosure of all material events on an ongoing basis.
- iv) The debenture trustees shall supervise the implementation of the conditions regarding creation of security for the debt securities and debenture redemption reserve.

Role of debenture trustee with respect to creation or enforcing the security in a debenture issue

Creation of security means mortgaging the property in favour of Debenture Trustee for the benefit of debenture holders. This is an incidence of ownership of property and creation of security has to be done by the owner of the property. However, the debenture holders are beneficiaries and they have no access to mortgaged property. The Debenture Trustee holds the secured property on behalf of issuer of security and for benefit of debenture holders. In the event of default by the issuer of security, the Debenture Trustee will have the power and authority to bring the secured property to sale following the procedure in the Transfer of Property Act and the proceeds of sale will have to be applied to redeem the debentures.

DEBENTURE TRUST DEED

Debenture Trust deed is a written instrument legally conveying property to a trustee often for the purpose of securing a loan or mortgage. It is the document creating and setting out the terms of a trust. It will usually contain the names of the trustees, the identity of the beneficiaries and the nature of the trust property, as well as the powers and duties of the trustees. It constitutes trustees charged with the duty of looking after the rights and interests of the debenture holders. As per section 71 (7), any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion: Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose.

A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company; and a copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

As per section 71 and sub-rule (1) of Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 a trust deed in **Form No. SH.12** or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within three months of closure of the issue or offer. [Rule 18(5)]

As given in Form No. SH.12, the debenture trust deed shall, *inter alia*, contain the following:-

1. Description of debenture issue

- (a) Purpose of raising finance through the debenture issue;
- (b) Details of debenture issue as regards amount, tenure, interest/coupon rate, periodicity of payment, mode of payment and period of redemption;
- (c) An undertaking by the company to pay the interest and principal amount of such debentures to the Debenture holders as and when it becomes due, as per the terms of offer;
- (d) The terms of conversion/redemption of the debentures in terms of the issue to the debenture holders, options available, and debt equity ratio and debt service coverage ratio, if applicable.

2. Details of charge created (in case of secured debentures)

- (a) Nature of charge created and examination of title;
- (b) Rank of charge created viz. first, second, pari passu, residual, etc;

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- (c) Minimum security cover required;
- (d) Complete details of the asset(s) on which charge is created such as description, nature, title, location, value, basis of valuation etc.;
- (e) Methods and mode of preservation of assets charged as security for the debentures;
- (f) Other particulars of the charge, e.g., time period of charge, rate of interest, name of the charge holder;
- (g) Provision for subsequent valuation;
- (h) Procedure for allowing inspection of charged assets and book of accounts by debenture trustee or any person or person authorized by it;
- (i) Charging of future assets
- (j) Time limit within which the future security for the issue of debentures shall be created
- (k) Circumstances specifying when the security may be disposed of or leased out with the approval of trustees
- (l) Enforceability of securities, events under which security becomes enforceable
- (m) Obligation of company not to create further charge or encumbrance of the trust property without prior approval of the trustee

3. Particulars of the appointment of debenture trustee(s)

- (a) The conditions and procedure for the appointment of the debenture trustee ;
- (b) Procedure for resignation by trustee including appointment of new trustees;
- (c) Provision that the debenture trustee shall not relinquish his office until another debenture trustee has been appointed;
- (d) Procedure to remove debenture trustee by debenture holders providing for removal on a resolution passed by the holders of not less than three fourth in value of debentures;
- (e) Fees or commission or other legal travelling and other expenses payable to the trustee(s) for their services;
- (f) Rights of the trustee including the right to inspect the registers of the company and to take copies and extract thereof and the right to appoint a nominee director;
- (g) Duties of the trustee.

4. Events of defaults

- (a) Events under which the security becomes enforceable which shall include the following events:
 - (i) When the company makes two consecutive defaults in the payment of any interest which ought to have been paid in accordance with the terms of the issue;
 - (ii) When the company without the consent of debenture holders ceases to carry on its business or gives notice of its intention to do so;
 - (iii) When an order has been made by the Tribunal or a special resolution has been passed by the members of the company for winding up of the company;
 - (iv) When any breach of the terms of the prospectus inviting the subscriptions of debentures or of the covenants of this deed is committed;
 - (v) When the company creates or attempts to create any charge on the mortgaged premises or any part thereof without the prior approval of the trustees/debenture holders;
 - (vi) When in the opinion of the trustees the security of debenture holders is in jeopardy.

- (b) Steps which shall be taken by the debenture trustee in the event of defaults;
- (c) Circumstances specifying when the security may be disposed off or leased out with the approval of trustees;
- (d) A covenant that the company may hold and enjoy all the mortgaged premises and carry on therein and therewith the business until the security constituted becomes enforceable

5. Obligations of company

This section shall state the company's duty with respect to-

- (a) maintaining a Register of debenture holders including addresses of the debenture holders, record of subsequent transfers and changes of ownership;
- (b) keeping proper books of accounts open for inspection by debenture trustee;
- (c) permitting the debenture trustee to enter the debenture-holder's premises and inspect the state and condition of charged assets;
- (d) furnishing information required by the debenture trustee for the effective discharge of its duties and obligations, including copies of reports, balance sheets , profit and loss account etc.;
- (e) keeping charged property/security adequately insured and in proper condition;
- (f) paying all taxes, cesses, insurance premium with respect to charged property/security, on time;
- (g) not declaring any dividend to the shareholders in any year until the company has paid or made satisfactory provision for the payment of the installments of principal and interest due on the debentures;
- (h) creating the debenture redemption reserve;
- (i) converting the debentures into equity in accordance with the terms of the issue, if applicable;
- (j) informing the debenture trustee about any change in nature and conduct of business by the company before such change;
- (k) informing the debenture trustee of any significant changes in the composition of its Board of Directors;
- (l) informing the debenture trustee of any amalgamation, merger or reconstruction scheme proposed by the company;
- (m) keeping the debenture trustee informed of all orders, directions, notices, of court/tribunal affecting or likely to affect the charged assets;
- (n) not creating further charge or encumbrance over the trust property without the approval of the trustee;
- (o) obligation of the company to forward periodical reports to debenture trustees containing the following particulars:
 - (i) updated list of the names and addresses of the debenture holders;
 - (ii) details of interest due but unpaid and reasons thereof;
 - (iii) the number and nature of grievances received from debenture holders and (a) resolved by the company (b) unresolved by the company and the reasons for the same.
 - (iv) a statement that the assets of the company which are available by way of security are sufficient to discharge the claims of the debenture holders as and when they become due
- (p) complying with all directions/guidelines issued by a Regulatory authority, with regard to the debenture issue
- (q) submitting such information, as required by the debenture trustee

6. Miscellaneous:

- (a) The conditions under which the provisions of the trust deed or the terms and conditions of the debentures may be modified;
- (b) The mode of service of notices and other documents on the company, the trustee and the holders of the debentures;
- (c) The company to be responsible for paying any stamp duty on the trust deed or the debentures (if applicable);
- (d) Provisions regarding meetings of the debenture holders;
- (e) Provisions for redressal of grievances of debenture holders.

ISSUE AND LISTING OF NON CONVERTIBLE DEBT INSTRUMENTS

Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, shall apply to—

- (a) public issue of debt securities where “debt securities” means a non-convertible debt securities which create or acknowledge indebtedness, and include debenture, bonds and such other securities of a body corporate or any statutory body constituted by virtue of a legislation, whether constituting a charge on the assets of the body corporate or not, but excludes bonds issued by Government or such other bodies as may be specified by the Board , security receipts and securitized debt instruments; and
- (b) listing of debt securities issued through public issue or on private placement basis on a recognized stock exchange.

The company can make any public issue of debt securities only if as on the date of filing of draft offer document and final offer document, (a) the issuer or the person in control of the issuer, or its promoter or its director, has not been restrained or prohibited or debarred by the Board from accessing the securities market or dealing in securities (b) the issuer or any of its promoters or directors is not a wilful defaulter or it is not in default of payment of interest or repayment of principal amount in respect of debt securities issued by it to the public, if any, for a period of more than six months.

Procedure for Public Issues of Non Convertible debt instruments under SEBI (Issue and Listing of Debt Securities) Regulations, 2008

- i) Call a Board Meeting after giving notice to all the directors of the company to decide following about the issue of debentures.
 - whether the debenture is non-convertible, or fully or partly convertible
 - credit rating
 - appointment of trustee
 - appointment of Lead Manager(s) and other intermediaries
- ii) Make an application to one or more recognized stock exchanges for listing of such securities therein. If the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange. If the application is made to any of the stock exchanges having nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange.
- iii) Obtain in-principle approval for listing of its debt securities on the recognized stock exchanges where the application for listing has been made.
- iv) Obtain credit rating from at least one credit rating agency registered with the Board and disclose it in the offer document.

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- v) Enter into an arrangement with a depository registered with the Board for dematerialization of the debt securities that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made there-under.
- vi) Appoint one or more merchant bankers registered with the Board at least one of whom shall be a lead merchant banker.
- vii) Appoint one or more debenture trustees in accordance with the provisions of Section 71 of the Companies Act, 2013 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.
- viii) No debt securities will be issued for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management.
- ix) Prepare an offer document containing following material disclosures which are necessary for the subscribers of the debt securities to take an informed investment decision.
 - the disclosures specified in *Section 26* of the Companies Act, 2013
 - disclosure specified in *Schedule I* of SEBI Issue and Listing of Debt Securities) Regulations, 2008
 - additional disclosures as may be specified by the Board.
- x) File the draft offer document with the designated stock exchange through the lead merchant banker and post the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange. Also display the draft offer document on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed.
- xi) Following shall be ensured by the lead merchant banker –
 - The draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.
 - All comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.
- xii) Forward a copy of draft and final offer document to the Board for its records, [along with regulatory fees as specified in Schedule V] simultaneously with filing of these documents with designated Stock Exchange.
- xiii) Obtain a due diligence certificate as per Schedule II of these regulations from the lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies.
- xiv) Obtain a due diligence certificate as per Schedule III of these regulations from the debenture trustee prior to the opening of the public issue.
- xv) Both the draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats.
- xvi) File the offer document with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue. Also make physical copy of the offer document to the person demanding it.
- xvii) Make an advertisement in a national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV.
- xviii) Ensure that every application form issued by the issuer is accompanied by a copy of the abridged prospectus.

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- xix) The company may propose to issue debt securities to the public through the on-line system of the designated stock exchange.
- xx) The issuer may determine the price of debt securities in consultation with the lead merchant banker and the issue may be at fixed price or the price may be determined through book building process in accordance with the procedure as may be specified by the Board.
- xxi) The minimum subscription for public issue of debt securities shall be 75% of the base issue size.
- xxii) A public issue of debt securities may be underwritten by an underwriter registered with the Board and in such a case adequate disclosures regarding underwriting arrangements shall be disclosed in the offer document.
- xxiii) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading. The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement.
- xxiv) A trust deed for securing the issue of debt securities shall be executed by the issuer in favour of the debenture trustee within three months of the closure of the issue containing such clauses as may be prescribed under section 71 of the Companies Act, 2013 and those mentioned in Schedule IV of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.
- xxv) Create debenture redemption reserve in accordance with the provisions of the Companies Act, 2013.
- xxvi) Disclose the proposal to create a charge or security, if any, in respect of secured debt securities in the offer document along with its implications.
- xxvii) Keep all the issue proceeds in an escrow account until the documents for creation of security as stated in the offer document are executed.

Procedure for Redemption and roll-over of non convertible debt securities under SEBI (Issue and Listing of Debt Securities) Regulations, 2008

- i) The issuer shall redeem the debt securities in terms of the offer document.
- ii) Where the issuer desires to roll-over the debt securities issued by it, it shall do so only upon passing of a special resolution of holders of such securities and give twenty one days notice of the proposed roll over to them.
- iii) The notice shall contain disclosures with regard to credit rating and rationale for roll-over.
- iv) The issuer shall, prior to sending the notice to holders of debt securities, file a copy of the notice and proposed resolution with the stock exchanges where such securities are listed, for dissemination of the same to public on its website.
- v) The debt securities issued can be rolled over subject to the following conditions :-
 - The roll-over is approved by a special resolution passed by the holders of debt securities through postal ballot having the consent of not less than 75% of the holders by value of such debt securities;
 - at least one rating is obtained from a credit rating agency within a period of six months prior to the due date of redemption and is disclosed in the notice referred to in sub-regulation (2);
 - fresh trust deed shall be executed at the time of such roll –over or the existing trust deed may be continued if the trust deed provides for such continuation ;

- adequate security shall be created or maintained in respect of such debt securities to be rolled-over.
- vi) Redeem the debt securities of all the debt securities holders, who have not given their positive consent to the roll-over.

PROCEDURE FOR LISTING OF NON CONVERTIBLE DEBT SECURITIES UNDER SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008

- i) Make an application for listing to one or more recognized stock exchanges in terms of section 40 of the Companies Act, 2013.
- ii) Comply with conditions of listing of such debt securities as specified in the Listing Regulation with respect to debt securities.
- iii) Where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognised stock exchange within fifteen days from the date of allotment of such debt securities.
- iv) For listing of debt securities issued on private placement basis on a recognized stock exchange, the following conditions have to be fulfilled-
 - a. the issuer has issued such debt securities in compliance with the provisions of the Companies Act, 2013, rules prescribed there under and other applicable laws;
 - b. credit rating has been obtained in respect of such debt securities from at least one credit rating agency registered with the Board;
 - c. the debt securities proposed to be listed are in dematerialized form ;
 - d. the disclosures as specified in Schedule I of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, have been made in the websites of stock exchanges where such securities are proposed to be listed and shall be available for download in PDF / HTML formats, accompanied by the latest Annual Report of the issuer.
 - e. Where the application is made to more than one recognized stock exchange, the issuer shall choose one of them as the designated stock exchange.
 - f. Comply with conditions of listing of such debt securities as specified in the Listing Regulation with respect to debt securities.
 - g. The designated stock exchange shall collect a regulatory fee as specified in Schedule V from the issuer at the time of listing of debt securities issued on private placement basis.

Consolidation and re-issuance (Regulation 20A);

An issuer may carry out consolidation and re-issuance of its debt securities, subject to the fulfilment of the following conditions:

- a) There is such an enabling provision in its articles under which it has been incorporated;
- b) The issue is through private placement;
- c) The issuer has obtained fresh credit rating for each re-issuance from at least one credit rating agency registered with the Board and is disclosed;
- d) Such ratings shall be revalidated on a periodic basis and the change, if any, shall be disclosed;
- e) Appropriate disclosures are made with regard to consolidation and re-issuance in the Term Sheet.

Right to recall or redeem prior to maturity (Regulation 17A)

An issuer making public issue of debt securities may recall such securities prior to maturity date at his option (call) or provide such right of redemption prior to maturity date (put) to all the investors or only to retail investors, at their option, subject to the following:

- a) Such right to recall or redeem debt securities prior to maturity date is exercised in accordance with the terms of issue and detailed disclosure in this regard is made in the offer document including date from which such right is exercisable, period of exercise (which shall not be less than three working days), redemption amount (including the premium or discount at which such redemption shall take place);
- b) The issuer or investor may exercise such right with respect to all the debt securities issued or held by them respectively or with respect to a part of the securities so issued or held ;
- c) In case of partial exercise of such right in accordance with the terms of the issue by the issuer , it shall be done on proportionate basis only;
- d) No such right shall be exercisable before expiry of twenty four months from the date of issue of such debt securities;
- e) Issuer shall send notice to all the eligible holders of such debt securities at least twenty one days before the date from which such right is exercisable;
- f) Issuer shall also provide a copy of such notice to the stock exchange where the such debt securities are listed for wider dissemination and shall make an advertisement in the national daily having wide circulation indicating the details of such right and eligibility of the holders who are entitled to avail such right ;
- g) Issuer shall pay the redemption proceeds to the investors along with the interest due to the investors within fifteen days from the last day within which such right can be exercised;
- h) Issuer shall pay interest at the rate of fifteen per cent per annum for the period of delay, if any,
- i) After the completion of the exercise of such right, the issuer shall submit a detailed report to the stock exchange for public dissemination regarding the debt securities redeemed during the exercise period and details of redemption thereof.

Explanation: - For the purpose of this regulation, retail investor shall mean the holder of debt securities having face value not more than rupees two lakh.

OBLIGATIONS OF THE ISSUER, LEAD MERCHANT BANKER, ETC. UNDER SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008

- (i) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.
- (ii) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and Section 26 of the Companies Act, 2013.
- (iii) The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board.
- (iv) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.

- (v) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange.
- (vi) The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities.

PROCEDURE FOR ISSUE OF CONVERTIBLE DEBT INSTRUMENTS UNDER SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 will be applicable for issue of convertible debt instruments. In addition to the common conditions for public and rights issues following additional requirements are laid down in these regulations, for an issuer making a public issue or rights issue of convertible debt instruments:

(A) The lead Merchant Bankers shall submit a due diligence certificate from debenture trustee along with draft offer document to the Board.

- (a) Obtain a credit rating from one or more credit rating agencies;
- (b) Appoint one or more debenture trustees in accordance with the provisions of section 71 of the Companies Act, 2013 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;
- (c) Create debenture redemption reserve in accordance with the provisions of section 71 of the Companies Act, 2013;
- (d) if the issuer proposes to create a charge or security on its assets in respect of secured convertible debt instruments, it shall ensure that:
 - such assets are sufficient to discharge the principal amount at all times;
 - such assets are free from any encumbrance;
 - where security is already created on such assets in favour of financial institutions or banks or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the consent of such financial institution, bank or lessor for a second or pari passu charge has been obtained and submitted to the debenture trustee before the opening of the issue;
 - the security/asset cover shall be arrived at after reduction of the liabilities having a first/prior charge, in case the convertible debt instruments are secured by a second or subsequent charge.
- (e) Redeem the convertible debt instruments in terms of the offer document.

In case of an issue of convertible debt instruments, the issuer shall give following additional undertakings in the offer document:

- that the issuer shall forward the details of utilisation of the funds raised through the convertible debt instruments duly certified by the statutory auditors of the issuer, to the debenture trustees at the end of each half-year.
- that the issuer shall disclose the complete name and address of the debenture trustee in the annual report.
- that the issuer shall provide a compliance certificate to the convertible debt instrument holders (on yearly basis) in respect of compliance with the terms and conditions of issue of convertible debt instruments as contained in the offer document, duly certified by the debenture trustee.
- that the issuer shall furnish a confirmation certificate that the security created by the issuer in favour of the convertible debt instrument holders is properly maintained and is adequate to meet the payment obligations towards the convertible debt instrument holders in the event of default.

- that necessary cooperation with the credit rating agency(ies) shall be extended in providing true and adequate information till the debt obligations in respect of the instrument are outstanding.

PROCEDURE FOR ROLL-OVER OF NON CONVERTIBLE PORTION OF PARTLY CONVERTIBLE DEBT INSTRUMENTS UNDER SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009 (REGULATION 21)

The non-convertible portion of partly convertible debt instruments issued by a listed issuer, the value of which exceeds fifty lakh rupees, may be rolled over without change in the interest rate, subject to the following conditions:

- seventy five per cent. of the holders of the convertible debt instruments of the issuer have, through a resolution, approved the rollover through postal ballot;
- the issuer has, along with the notice for passing the resolution, sent to all holders of the convertible debt instruments, an auditors' certificate on the cash flow of the issuer and with comments on the liquidity position of the issuer;
- the issuer has undertaken to redeem the non-convertible portion of the partly convertible debt instruments of all the holders of the convertible debt instruments who have not agreed to the resolution;
- credit rating has been obtained from at least one credit rating agency registered with the Board within a period of six months prior to the due date of redemption and has been communicated to the holders of the convertible debt instruments, before the roll over;

The creation of fresh security and execution of fresh trust deed shall not be mandatory if the existing trust deed or the security documents provide for continuance of the security till redemption of secured convertible debt instruments; Provided that whether the issuer is required to create fresh security and to execute fresh trust deed or not shall be decided by the debenture trustee.

PROCEDURE FOR CONVERSION OF OPTIONALLY CONVERTIBLE DEBT INSTRUMENTS INTO EQUITY SHARE CAPITAL UNDER SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009 (Regulation 22)

- An issuer shall not convert its optionally convertible debt instruments into equity shares unless the holders of such convertible debt instruments have sent their positive consent to the issuer and non-receipt of reply to any notice sent by the issuer for this purpose shall not be construed as consent for conversion of any convertible debt instruments.
- Where the value of the convertible portion of any convertible debt instruments issued by a listed issuer exceeds fifty lakh rupees and the issuer has not determined the conversion price of such convertible debt instruments at the time of making the issue, the holders of such convertible debt instruments shall be given the option of not converting the convertible portion into equity shares: Provided that where the upper limit on the price of such convertible debt instruments and justification thereon is determined and disclosed to the investors at the time of making the issue, it shall not be necessary to give such option to the holders of the convertible debt instruments for converting the convertible portion into equity share capital within the said upper limit.
- Where an option is to be given to the holders of the convertible debt instruments in terms of sub-regulation (2) and if one or more of such holders do not exercise the option to convert the instruments into equity share capital at a price determined in the general meeting of the shareholders, the issuer shall redeem that part of the instruments within one month from the last date by which option is to be exercised, at a price which shall not be less than its face value.
- the provision of sub-regulation (3) shall not apply if such redemption is in terms of the disclosures made in the offer document.

PROCEDURE FOR ISSUE OF CONVERTIBLE DEBT INSTRUMENTS FOR FINANCING UNDER SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009 (Regulation 23)

No issuer shall issue convertible debt instruments for financing replenishment of funds or for providing loan to or for acquiring shares of any person who is part of the same group or who is under the same management: Provided that an issuer may issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of issue of such debt instruments.

HIGHLIGHTS OF CHAPTER V OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 RELATING TO OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS NON-CONVERTIBLE DEBT SECURITIES

Applicability (Regulation 49)

(1) The provisions of this chapter shall apply only to a listed entity which has listed its 'Non-convertible Debt Securities' on a recognised stock exchange in accordance with Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.

(2) The provisions of this chapter shall also be applicable to "perpetual debt instrument" listed by banks.

Intimation to stock exchange(s) (Regulation 50)

(1) The listed entity shall give prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable.

(2) The listed entity shall intimate the stock exchange(s), its intention to raise funds through new non-convertible debt securities:

Provided that the above intimation may be given prior to the meeting of board of directors wherein the proposal to raise funds through new non convertible debt securities or non-convertible redeemable preference shares shall be considered.

(3) The listed entity shall intimate to the stock exchange(s), at least two working days in advance, excluding the date of the intimation and date of the meeting, regarding the meeting of its board of directors, at which the recommendation or declaration of issue of non convertible debt securities is proposed to be considered

Financial Results (Regulation 52)

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 within forty five days from the end of the half year to the recognised stock exchange(s).

The listed entity shall comply with the specified requirements with respect to preparation, approval, authentication and publication of annual and half-yearly financial results.

The listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:

- (a) credit rating and change in credit rating (if any);
- (b) asset cover available, in case of non convertible debt securities;
- (c) debt-equity ratio;
- (d) previous due date for the payment of interest for non convertible debt securities and whether the same has been paid or not; and,

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- (e) debt service coverage ratio;
- (f) interest service coverage ratio;
- (g) capital redemption reserve/debenture redemption reserve;
- (h) net worth;
- (i) net profit after tax;
- (j) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non banking financial companies registered with the Reserve Bank of India. Provided further that the requirement of this sub- regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

While submitting the information required under sub- regulation (4), the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.

The listed entity shall submit to the stock exchange on a half yearly basis along with the half yearly financial results, a statement indicating material deviations, if any, in the use of proceeds of issue of non convertible debt securities from the objects stated in the offer document.

The listed entity shall, within two calendar days of the conclusion of the meeting of the board of directors, publish the financial results and statement in at least one English national daily newspaper circulating in the whole or substantially the whole of India.

Annual Report (Regulation 53)

The annual report of the listed entity shall contain disclosures as specified in Companies Act, 2013 along with the following:

- (a) audited financial statements i.e. balance sheets, profit and loss accounts etc., and Statement on Impact of Audit Qualification as stipulated in regulation 52(3)(a), if applicable;
- (b) cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3/ Indian Accounting Standard 7, mandated under Section 133 of the Companies Act, 2013 read with relevant rules framed there under or by the Institute of Chartered Accountants of India, whichever is applicable;
- (c) auditors report;
- (d) directors report;
- (e) name of the debenture trustees with full contact details ;
- (f) related party disclosures as specified in Para A of Schedule V.

Documents and Intimation to Debenture Trustees (Regulation 56)

(1) The listed entity shall forward the following to the debenture trustee promptly:

- (a) a copy of the annual report along with a copy of certificate from the listed entity's auditors in respect of utilisation of funds during the implementation period of the project for which the funds have been raised:

Provided that in the case of debentures issued for financing working capital or general corporate purposes or for capital raising purposes the copy of the auditor's certificate may be submitted at the end of each financial year till the funds have been fully utilised or the purpose for which these funds were intended has been achieved.

- (b) a copy of all notices, resolutions and circulars relating to-

- (i) new issue of non-convertible debt securities at the same time as they are sent to holders of non convertible debt securities;
 - (ii) the meetings of holders of non-convertible debt securities at the same time as they are sent to the holders of non convertible debt securities or advertised in the media including those relating to proceedings of the meetings;
- (c) intimations regarding :
- (i) any revision in the rating;
 - (ii) any default in timely payment of interest in respect of the non convertible debt securities;
 - (iii) failure to create charge on the assets;
- (d) a half-yearly certificate regarding maintenance of hundred percent. asset cover in respect of listed non convertible debt securities, by either a practicing company secretary or a practicing chartered accountant, along with the half yearly financial results: Provided that submission of such half yearly certificates is not applicable in cases where a listed entity is a bank or non banking financial companies registered with Reserve Bank of India or where bonds are secured by a Government guarantee.
- (2) The listed entity shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee.
- (3) The listed entity may, subject to the consent of the debenture trustee, send the information stipulated in sub-regulation (1), in electronic form/fax.

Other submissions to stock exchange(s) (Regulation 57)

- (1) The listed entity shall submit a certificate to the stock exchange within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the non convertible debt securities.
- (2) The listed entity shall provide an undertaking to the stock exchange(s) on annual basis stating that all documents and intimations required to be submitted to Debenture Trustees in terms of Trust Deed and Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 have been complied with.
- (3) The listed entity shall forward to the stock exchange any other information in the manner and format as specified by the Board from time to time.

Record Date (Regulation 60)

- (1) The listed entity shall fix a record date for purposes of payment of interest and payment of redemption or repayment amount or for such other purposes as specified by the stock exchange.
- (2) The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date.

Website (Regulation 62)

- (1) The listed entity shall maintain a functional website containing the following information about the listed entity:-
- (a) details of its business;
 - (b) financial information including complete copy of the annual report including balance sheet, profit and loss account, directors report etc;
 - (c) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
 - (d) email address for grievance redressal and other relevant details;

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- (e) name of the debenture trustees with full contact details;
- (f) the information, report, notices, call letters, circulars, proceedings, etc concerning non convertible debt securities;
- (g) all information and reports including compliance reports filed by the listed entity;
- (h) information with respect to the following events:
 - (i) default by issuer to pay interest on or redemption amount;
 - (ii) failure to create a charge on the assets;
 - (iii) revision of rating assigned to the non convertible debt securities:

(2) The listed entity may also issue a press release with respect to the events specified in sub-regulation (1).

(3) The listed entity shall ensure that the contents of the website are correct and updated at any given point of time.

Applicability of Chapters IV and V (Regulation 63)

Entity which has listed its 'non-convertible debt securities' on any recognised stock exchange, shall be bound by the provisions in Chapter IV of these regulations.

(2) The listed entity described in sub-regulation (1) shall additionally comply with the following regulations in Chapter V:

- (a) regulation 50(2),(3);
- (b) regulation 51;
- (c) regulation 52(3), (4), (5) and (6);
- (d) regulation 53
- (e) regulation 54
- (f) regulation 55
- (g) regulation 56
- (h) regulation 57
- (i) regulation 58
- (j) regulation 59
- (k) regulation 60
- (l) regulation 61:

Provided that the listed entity which has submitted any information to the stock exchange in compliance with the disclosure requirements under Chapter IV of these regulations, need not re-submit any such information under the provisions of this regulations without prejudice to any power conferred on the Board or the stock exchange or any other authority under any law to seek any such information from the listed entity:

Provided further that the listed entity, which has satisfied certain obligations in compliance with other chapters, shall not separately satisfy the same conditions under this chapter.

HIGHLIGHTS OF CHAPTER VIII OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 I.E. OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS SECURITISED DEBT INSTRUMENTS

Applicability (Regulation 81)

(1) The provisions of this chapter shall apply to Special Purpose Distinct Entity issuing securitised debt instruments

and trustees of Special Purpose Distinct Entity shall ensure compliance with each of the provisions of these regulations.

(2) The expressions “asset pool”, “clean up call option”, “credit enhancement”, “debt or receivables”, “investor”, “liquidity provider”, “obligor”, “originator”, “regulated activity”, “scheme”, “securitization”, “securitized debt instrument”, “servicer”, “special purpose distinct entity”, “sponsor” and “trustee” shall have the same meaning as assigned to them under Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008;

Intimation and filings with stock exchange(s) (Regulation 82).

(1) The listed entity shall intimate the Stock exchange, of its intention to issue new securitized debt instruments either through a public issue or on private placement basis (if it proposes to list such privately placed debt securities on the Stock exchange) prior to issuing such securities.

(2) The listed entity shall intimate to the stock exchange(s), at least two working days in advance, excluding the date of the intimation and date of the meeting, regarding the meeting of its board of trustees, at which the recommendation or declaration of issue of securitized debt instruments or any other matter affecting the rights or interests of holders of securitized debt instruments is proposed to be considered.

(3) The listed entity shall submit such statements, reports or information including financial information pertaining to Schemes to stock exchange within seven days from the end of the month/ actual payment date, either by itself or through the servicer, on a monthly basis in the format as specified by the Board from time to time:

Provided that where periodicity of the receivables is not monthly, reporting shall be made for the relevant periods.

(4) The listed entity shall provide the stock exchange, either by itself or through the servicer, loan level information, without disclosing particulars of individual borrowers, in manner specified by stock exchange.

DISCLOSURE OF INFORMATION HAVING BEARING ON PERFORMANCE/OPERATION OF LISTED ENTITY AND/OR PRICE SENSITIVE INFORMATION [REGULATION 83 OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015]

(1) The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the on performance/ operation of the listed entity and price sensitive information.

(2) Without prejudice to the generality of sub-regulation (1), the listed entity shall make the disclosures specified in Part D of Schedule III.

Explanation.- The expression ‘promptly inform’, shall imply that the stock exchange must be informed must as soon as practically possible and without any delay and that the information shall be given first to the stock exchange(s) before providing the same to any third party.

CREDIT RATING [REGULATION 84 OF SEBI (LODR) REGULATIONS, 2015]

(1) Every rating obtained by the listed entity with respect to securitised debt instruments shall be periodically reviewed, preferably once a year, by a credit rating agency registered by the Board.

(2) Any revision in rating(s) shall be disseminated by the stock exchange(s).

INFORMATION TO INVESTORS [REGULATION 85 OF SEBI (LODR) REGULATIONS, 2015]

(1) The listed entity shall provide either by itself or through the servicer, loan level information without disclosing particulars of individual borrower to its investors.

(2) The listed entity shall provide information regarding revision in rating as a result of credit rating done periodically in terms of regulation 84 above to its investors.

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(3) The information at sub-regulation (1) and (2) may be sent to investors in electronic form/fax if so consented by the investors.

(4) The listed entity shall display the email address of the grievance redressal division and other relevant details prominently on its website and in the various materials / pamphlets/ advertisement campaigns initiated by it for creating investor awareness.

RECORD DATE [REGULATION 87 OF SEBI (LODR) REGULATIONS, 2015]

(1) The listed entity shall fix a record date for payment of interest and payment of redemption or repayment amount or for such other purposes as specified by the recognised stock exchange(s).

(2) The listed entity shall give notice in advance of atleast seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the Stock Exchange may agree to or require specifying the purpose of the record date.

Note:

- *A nomination form as given in Form No. SH.13 of Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 is given in Annexure I*
- *All the Schedules of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 are placed as Annexure 2.*
- Section 62(3) states that the provisions of 62 shall not apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the companies to convert such debentures/loan into shares in the company. Provided that the term of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in General Meeting.

ANNEXURE

ANNEXURE I

FORM NO. SH-13

Nomination Form

[Pursuant to section 72 of the Companies Act, 2013 and rule 19(1) of the Companies (Share Capital and Debentures) Rules 2014]

To

Name of the company: Address of the company:

I/We the holder(s) of the securities particulars of which are given hereunder wish to make nomination and do hereby nominate the following persons in whom shall vest, all the rights in respect of such securities in the event of my/our death.

(1) Particulars of the Securities (in respect of which nomination is being made.

Nature of Securities	Folio No.	No. of securities	Certificate No.	Distinctive No.

(2) Particulars of Nominee/s –

- (a) Name:
- (b) Date of Birth
- (c) Father's/Mother's/Spouse's name:
- (d) Occupation:
- (e) Nationality:
- (f) Address:
- (g) E-mail ID:
- (h) Relationship with the security holder:

(3) In case Nominee is a Minor:

- (a) Date of Birth
- (b) Date of attaining majority
- (c) Name of guardian:
- (d) Address of guardian:

Name:

Address:

Name of the Security

Holder(s)

Signature

Witness with the name and address

SCHEDULES of SEBI (Issue & Listing of Debt Securities) Regulations, 2008

SCHEDULE I

[See Regulation 5(2)(b), Regulation 19(3), Regulation 21 and Regulation 21A]

DISCLOSURES

1. The issuer seeking listing of its debt securities on a recognized stock exchange shall file the following disclosures along with the listing application to the stock exchange:

- A. Memorandum and Articles of Association and necessary resolution(s) for the allotment of the debt securities;
- B. Copy of last three years audited Annual Reports;
- C. Statement containing particulars of, dates of, and parties to all material contracts and agreements;
- D. Copy of the Board / Committee Resolution authorizing the borrowing and list of authorized signatories.
- E. An undertaking from the issuer stating that the necessary documents for the creation of the charge, where applicable, including the Trust Deed would be executed within the time frame prescribed in the relevant regulations/act/rules etc and the same would be uploaded on the website of the Designated Stock exchange, where the debt securities have been listed, within five working days of execution of the same.
- F. Any other particulars or documents that the recognized stock exchange may call for as it deems fit.
- G. An undertaking that permission / consent from the prior creditor for a second or *pari passu* charge being created, where applicable, in favor of the trustees to the proposed issue has been obtained.

2. Issuer shall submit the following disclosures to the Debenture Trustee in electronic form (soft copy) at the time of allotment of the debt securities:

- A. Memorandum and Articles of Association and necessary resolution(s) for the allotment of the debt securities;
- B. Copy of last three years' audited Annual Reports;
- C. Statement containing particulars of, dates of, and parties to all material contracts and agreements;
- D. Latest Audited / Limited Review Half Yearly Consolidated (wherever available) and Standalone Financial Information (Profit & Loss statement, Balance Sheet and Cash Flow statement) and auditor qualifications , if any.
- E. An undertaking to the effect that the Issuer would, till the redemption of the debt securities, submit the details mentioned in point (D) above to the Trustee within the timelines as mentioned in Simplified Listing Agreement issued by SEBI vide circular No.SEBI/IMD/BOND/1/2009/11/05 dated May 11, 2009 as amended from time to time, for furnishing / publishing its half yearly/ annual result. Further, the Issuer shall within 180 days from the end of the financial year, submit a copy of the latest annual report to the Trustee and the Trustee shall be obliged to share the details submitted under this clause with all 'Qualified Institutional Buyers' (QIBs) and other existing debenture-holders within two working days of their specific request.

3. The following disclosures shall be made where relevant:

- A. Issuer Information
 - a. Name and address of the following:-
 - i. Registered office of the Issuer
 - ii. Corporate office of the Issuer
 - iii. Compliance officer of the Issuer

- iv. CFO of the Issuer
 - v. Arrangers, if any, of the instrument
 - vi. Trustee of the issue
 - vii. Registrar of the issue
 - viii. Credit Rating Agency (-ies) of the issue and
 - ix. Auditors of the Issuer
- b. A brief summary of the business/ activities of the Issuer and its line of business containing atleast following information:-
- i. Overview
 - ii. Corporate Structure
 - iii. Key Operational and Financial Parameters * for the last 3 Audited years
 - iv. Project cost and means of financing, in case of funding of new projects

*At least covering the following - Consolidated basis (wherever available) else on standalone basis

Parameters	Upto latest Half Year	FY.....	FY.....	FY.....
For Non-Financial Entities				
Networth				
Total Debt				
of which – Non Current Maturities of Long Term Borrowing				
– Short Term Borrowing				
– Current Maturities of Long Term Borrowing				
Net Fixed Assets				
Non Current Assets				
Cash and Cash Equivalent				
Current Investments Current Assets Current Liabilities Net sales				
EBITDA EBIT Interest PAT				
Dividend amounts Current ratio				
Interest coverage ratio Gross debt/equity ratio				
Debt Service Coverage Ratios				
For Financial Entities				
Networth				
Total Debt				

of which – Non Current Maturities of Long Term Borrowing				
– Short Term Borrowing				
– Current Maturities of Long Term Borrowing				
Net Fixed Assets				
Non Current Assets				
Cash and Cash Equivalents				
Current Investments				
Current Assets				
Current Liabilities				
Assets Under Management				
Off Balance Sheet Assets				
Interest Income				
Interest Expense				
Provisioning & Write-offs				
PAT				
Gross NPA (%)				
Net NPA (%)				
Tier I Capital Adequacy Ratio (%)				
Tier II Capital Adequacy Ratio (%)				

Gross Debt: Equity Ratio of the Company:-

Before the issue of debt securities	
After the issue of debt securities	

c. A brief history of the Issuer since its incorporation giving details of its following activities:-

i. Details of Share Capital as on last quarter end:-

Share Capital	Rs
Authorized Share Capital	

Issued, Subscribed and Paid-up Share Capital

ii. Changes in its capital structure as on last quarter end, for the last five years:-

Date of Change (AGM/EGM)	Rs.	Particulars

iii. Equity Share Capital History of the Company as on last quarter end, for the last five years:-

Date of Allotment	No of Equity Shares	Face Value (Rs)	Issue Price (Rs)	Consideration (Cash, other than cash, etc)	Nature of Allotment	Cumulative			Remarks
						No. of equity shares	Equity Share Capital (Rs)	Equity Share Premium (in Rs)	

Notes : (If any)

iv. Details of any Acquisition or Amalgamation in the last 1 year.

v. Details of any Reorganization or Reconstruction in the last 1 year:-

Type of Event	Date of Announcement	Date of Completion	Details

d. Details of the shareholding of the Company as on the latest quarter end:-

i. Shareholding pattern of the Company as on last quarter end:-

Sr No	Particulars	Total No of Equity Shares	No of shares in demat form	Total Shareholding as % of total no of equity shares

Notes: - Shares pledged or encumbered by the promoters (if any)

ii. List of top 10 holders of equity shares of the Company as on the latest quarter end:-

Sr No	Name of the shareholders	Total No of Equity Shares	No of shares in demat form	Total Shareholding as % of total no of equity shares

e. Following details regarding the directors of the Company:-

i. Details of the current directors of the Company*

Name, Designation and DIN	Age	Address	Director of the Company since	Details of other directorship

iv. List of Top 10 Debenture Holders (as on)

Sr. No.	Name of Debenture Holders	Amount

Note: Top 10 holders' (in value terms, on cumulative basis for all outstanding debentures issues) details should be provided.

- v. The amount of corporate guarantee issued by the Issuer along with name of the counterparty (like name of the subsidiary, JV entity, group company, etc) on behalf of whom it has been issued.
- vi. Details of Commercial Paper:- The total Face Value of Commercial Papers Outstanding as on the latest quarter end to be provided and its breakup in following table:-

Maturity Date	Amt Outstanding

vii. Details of Rest of the borrowing (if any including hybrid debt like FCCB, Optionally Convertible Debentures / Preference Shares) as on:-

Party Name (in case of Facility)/ Instrument Name	Type of Facility/ Instrument	Amt Sanctioned /Issued	Principal Amt outstanding	Repayment Date /Schedule	Credit Rating	Secured/ Unsecured	Security

- viii. Details of all default/s and/or delay in payments of interest and principal of any kind of term loans, debt securities and other financial indebtedness including corporate guarantee issued by the Company, in the past 5 years .
- ix. Details of any outstanding borrowings taken/ debt securities issued where taken / issued (i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount, or (iii) in pursuance of an option;

h. Details of Promoters of the Company:-

i. Details of Promoter Holding in the Company as on the latest quarter end :-

Sr. No.	Name of the shareholders	Total No of Equity Shares	No of shares in demat form	Total shareholding as % of total no of equity shares	No of Shares Pledged	% of Shares pledged with respect to shares owned

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- i. Abridged version of Audited Consolidated (wherever available) and Standalone Financial Information (like Profit & Loss statement, Balance Sheet and Cash Flow statement) for at least last three years and auditor qualifications , if any. *
- j. Abridged version of Latest Audited / Limited Review Half Yearly Consolidated (wherever available) and Standalone Financial Information (like Profit & Loss statement, and Balance Sheet) and auditors qualifications, if any. *
- k. Any material event/ development or change having implications on the financials/credit quality (e.g. any material regulatory proceedings against the Issuer/promoters, tax litigations resulting in material liabilities, corporate restructuring event etc) at the time of issue which may affect the issue or the investor's decision to invest / continue to invest in the debt securities.
- l. The names of the debenture trustee(s) shall be mentioned with statement to the effect that debenture trustee(s) has given his consent to the Issuer for his appointment under regulation 4 (4) and in all the subsequent periodical communications sent to the holders of debt securities.
- m. The detailed rating rationale (s) adopted (not older than one year on the date of opening of the issue)/ credit rating letter issued (not older than one month on the date of opening of the issue) by the rating agencies shall be disclosed.
- n. If the security is backed by a guarantee or letter of comfort or any other document / letter with similar intent, a copy of the same shall be disclosed. In case such document does not contain detailed payment structure(procedure of invocation of guarantee and receipt of payment by the investor along with timelines), the same shall be disclosed in the offer document.
- o. Copy of consent letter from the Debenture Trustee shall be disclosed.
- p. Names of all the recognised stock exchanges where the debt securities are proposed to be listed clearly indicating the designated stock exchange.
- q. Other details
 - i. DRR creation - relevant regulations and applicability.
 - ii. Issue/instrument specific regulations - relevant details (Companies Act, RBI guidelines, etc).
 - iii. Application process.

*Issuer shall provide latest Audited or Limited Review Financials in line with timelines as mentioned in Simplified Listing Agreement issued by SEBI vide circular No.SEBI/IMD/BOND/1/2009/11/05 dated May 11, 2009 as amended from time to time , for furnishing / publishing its half yearly/ annual result.

B. Issue details

- a. Summary term sheet shall be provided which shall include at least following information (where relevant) pertaining to the Secured / Unsecured Non Convertible debt securities (or a series thereof):-

Security Name	Name of the bond which includes (Issuer
	Name, Coupon and maturity year) e.g.
	8.70% XXX 2015.
Issuer	
Type of Instrument	
Nature of Instrument	Secured or Unsecured

Lesson 5 □ □ Issue and Redemption of Debentures and Bonds **143**

Seniority	Senior or Subordinated.
Mode of Issue	Private placement
Eligible Investors	
Listing (including name of stock Exchange(s) where it will be listed and timeline for listing)	
Rating of the Instrument	_____ by _____ Ltd.
Issue Size	
Option to retain oversubscription (Amount)	
Objects of the Issue	
Details of the utilization of the Proceeds	
Coupon Rate	
Step Up/Step Down Coupon Rate ¹	
Coupon Payment Frequency	
Coupon payment dates	Dates on which coupon will be paid.
Coupon Type	Fixed, floating or other coupon structure.
Coupon Reset Process (including rates, spread, effective date, interest rate cap and floor etc).	
Day Count Basis	Actual/ Actual
Interest on Application Money	
Default Interest Rate	
Tenor	___ Months from the Deemed Date of Allotment
Redemption Date	Dates on which Principal will be repaid.
Redemption Amount	
Redemption Premium /Discount	
Issue Price	The price at which bond is issued
Discount at which security is issued and the effective yield as a result of such discount.	
Put Date	
Put Price	
Call Date	
Call Price	
Put Notification Time	Timelines by which the investor need to intimate Issuer before exercising the put.

Call Notification Time	Timelines by which the Issuer need to intimate investor before exercising the call.
Face Value	Rs 10 lakhs per instrument for all the issues
Minimum Application and in multiples of ___ Debt securities thereafter	
Issue Timing	
1. Issue Opening Date	
2. Issue Closing Date	
3. Pay-in Date	
4. Deemed Date of Allotment	
Issuance mode of the Instrument	Demat only (for private placement)
Trading mode of the Instrument	Demat only (for private placement)
Settlement mode of the Instrument	Insert details of payment procedure
Depository	
Business Day Convention ²	
Record Date	15 days prior to each Coupon Payment/ ²⁰ [Put] Date / [Call] Date / Redemption date.
Security (where applicable)	
(Including description, type of security, type of charge, likely date of creation of security, minimum security cover, revaluation, replacement of security).	
Transaction Documents ³	
Conditions Precedent to Disbursement	
Condition Subsequent to Disbursement	
Events of Default Provisions related to Cross Default Clause	N/A (Not Applicable) in case clause is not there else full description of the clause to be provided
Role and Responsibilities of Debenture	
Trustee	
Governing Law and Jurisdiction	

Notes:

1. If there is any change in Coupon Rate rate pursuant to any event including elapse of certain time period or downgrade in rating , then such new Coupon Rate and events which lead to such change should be disclosed.
2. The procedure used to decide the dates on which the payment can be made and adjusting payment dates

in response to days when payment can't be made due to any reason like sudden bank holiday etc., should be laid down.

3. *The list of documents which has been executed or will be executed in connection with the issue and subscription of debt securities shall be annexed.*
 - b. In privately placed issues, additional Covenants shall be included as part of the Issue Details on the following lines, as per agreement between the issuer and investor:
 - i. Security Creation (where applicable): In case of delay in execution of Trust Deed and Charge documents, the Company will refund the subscription with agreed rate of interest or will pay penal interest of atleast 2% p.a. over the coupon rate till these conditions are complied with at the option of the investor.
 - ii. Default in Payment: In case of default in payment of Interest and/or principal redemption on the due dates, additional interest of atleast @ 2% p.a. over the coupon rate will be payable by the Company for the defaulting period
 - iii. Delay in Listing: In case of delay in listing of the debt securities beyond 20 days from the deemed date of allotment, the Company will pay penal interest of atleast 1 % p.a. over the coupon rate from the expiry of 30 days from the deemed date of allotment till the listing of such debt securities to the investor.

The interest rates mentioned in above three cases are the minimum interest rates payable by the Company and are independent of each other.

C. Disclosures pertaining to wilful default

- (1) In case of listing of debt securities made on private placement, the following disclosures shall be made:
 - (a) Name of the bank declaring the entity as a wilful defaulter;
 - (b) The year in which the entity is declared as a wilful defaulter;
 - (c) Outstanding amount when the entity is declared as a wilful defaulter;
 - (d) Name of the entity declared as a wilful defaulter;
 - (e) Steps taken, if any, for the removal from the list of wilful defaulters;
 - (f) Other disclosures, as deemed fit by the issuer in order to enable investors to take informed decisions;
 - (g) Any other disclosure as specified by the Board.
- (2) The fact that the issuer or any of its promoters or directors is a wilful defaulter shall be disclosed prominently on the cover page with suitable cross-referencing to the pages.
- (3) Disclosures specified herein shall be made in a separate chapter or section, distinctly identifiable in the Index / Table of Contents.

SCHEDULE II

[See Regulation 6(7)]

FORMAT FOR DUE DILIGENCE CERTIFICATE AT THE TIME OF FILING THE OFFER DOCUMENT WITH REGISTRAR OF COMPANIES AND PRIOR TO OPENING OF THE ISSUE

To,

SECURITIES AND EXCHANGE BOARD OF INDIA

Dear Sir / Madam,

SUB.: ISSUE OF BY LTD.

1. We confirm that neither the issuer nor its promoters or directors have been prohibited from accessing the capital market under any order or direction passed by the Board. We also confirm that none of the intermediaries named in the offer document have been debarred from functioning by any regulatory authority.
2. We confirm that all the material disclosures in respect of the issuer have been made in the offer document and certify that any material development in the issue or relating to the issue up to the commencement of listing and trading of the shares offered through this issue shall be informed through public notices/ advertisements in all those newspapers in which pre-issue advertisement and advertisement for opening or closure of the issue have been given.
3. We confirm that the offer document contains all disclosures as specified in the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.
4. We also confirm that all relevant provisions of the Companies Act, 1956, Securities Contracts, (Regulation) Act, 1956, Securities and Exchange Board of India Act, 1992 and the Rules, Regulations, Guidelines, Circulars issued thereunder are complied with.

We confirm that all comments/ complaints received on the draft offer document filed on the website of (designated stock exchange) have been suitably addressed.

PLACE

DATE: LEAD MERCHANT BANKER (S)

SCHEDULE III

[See Regulation 6(8)]

FORMAT OF DUE DILIGENCE CERTIFICATE TO BE GIVEN BY THE DEBENTURE TRUSTEE BEFORE OPENING OF THE ISSUE

To,

SECURITIES AND EXCHANGE BOARD OF INDIA

Dear Sir / Madam,

SUB.: ISSUE OF BY LTD.

We, the Debenture Trustee (s) to the above mentioned forthcoming issue state as follows:

- (1) We have examined documents pertaining to the said issue and other such relevant documents.
- (2) On the basis of such examination and of the discussions with the issuer, its directors and other officers, other agencies and of independent verification of the various relevant documents, WE CONFIRM that:

- (a) The issuer has made adequate provisions for and/or has taken steps to provide for adequate security for the debt securities to be issued.
- (b) The issuer has obtained the permissions / consents necessary for creating security on the said property (ies).
- (c) The issuer has made all the relevant disclosures about the security and also its continued obligations towards the holders of debt securities.
- (d) All disclosures made in the offer document with respect to the debt securities are true, fair and adequate to enable the investors to make a well informed decision as to the investment in the proposed issue.

We have satisfied ourselves about the ability of the issuer to service the debt securities.

PLACE

DATE: DEBENTURE TRUSTEE TO THE ISSUE WITH HIS SEAL

SCHEDULE IV

[See Regulation 8(1)]

FORMAT OF ISSUE ADVERTISEMENTS FOR PUBLIC ISSUES

This is an advertisement for information purposes

..... **LIMITED**

(Incorporated on under the Companies Act as and subsequently renamed

..... on) Registered Office: Tel : Fax :

..... Corporate Office : Tel : Fax :

..... e-mail : Website :

THE ISSUE

Public issue of debt securities of Rs. each at a price of Rs.
..... (Summary Details of Coupon, Redemption, etc shall be disclosed)

PROMOTERS

XXX

PROPOSED LISTING..... Names of Stock Exchanges..... **MERCHANT BANKERS**(Names)

COMPLIANCE OFFICER OF THE ISSUER

Name, address, telephone and fax numbers, email ID, website address

CREDIT RATING

(The Rating Obtained shall be disclosed prominently along with the meaning of the same)

DEBENTURE TRUSTEES

(Names)

AVAILABILITY OF APPLICATION FORMS

Names of Issuer, Lead Managers, etc. (Addresses optional)

AVAILABILITY OF OFFER DOCUMENT

Investors are advised to refer to the offer document, and the risk factors contained therein, before applying in the issue. Full copy of the offer document is available on websites of issuer / lead manager(s) / Stock Exchange(s) on www.

ISSUE OPENS ON:

ISSUE CLOSES ON:

Issued by
Directors of Issuer

SCHEDULE V

[See Regulations 6(6) and 20]

REGULATORY FEES

- (1) There shall be charged, in respect of every draft offer document filed by a lead merchant banker with the Board in terms of these regulations, a non-refundable fee of 0.00025% of issue size, subject to the minimum of twenty five thousand rupees and maximum of fifty lakh rupees.
- (2) The fees as specified in clause (1) above shall be paid by means of a demand draft drawn in favour of 'the Securities and Exchange Board of India' payable at the place where the draft offer document is filed with the Board.
- (3) There shall be charged, in respect of every private placement of debt securities which are listed in terms of these regulations, a non-refundable fee of five thousand rupees which shall be paid to the designated stock exchange at the time of listing of the debt securities.
- (4) Every designated stock exchange shall remit the regulatory fee collected during the month under clause (3) above to the Board before tenth day of the subsequent month by means of a demand draft drawn in favour of 'the Securities and Exchange Board of India' payable at Mumbai along with the details of the issuances listed during the month.

LESSON ROUND UP

- A debenture is an instrument of debt executed by the company acknowledging its obligation to repay the sum at a specified rate and also carrying an interest.
- Bonds are typically issued by financial institutions, government undertaking and large companies.
- Section 71 of the Companies Act, 2013 specifies that any company can issue debenture with an option to convert the debentures into shares, either wholly or partly at the time of redemption.
- Debenture trustee means the trustee of the trust deed for securing any issue of debentures of a body corporate.
- Debenture trust deed is a written instrument legally conveying a property to the trustee often for the purpose of securing a loan or mortgage.
- The procedure for public issue of non-convertible debt instrument covered under SEBI (Issue and Listing of Debt Securities) Regulations 2008

Lesson 6

Acceptance of Deposits by Companies

LESSON OUTLINE

- Acceptance of deposit – A revisit
- Procedure for acceptance of deposits
 - Point of difference
 - Point of similarity
- Quantum of deposits not can be accepted
- Procedure for acceptance of deposits from members and public(other than members)
- Checklist of secretarial compliance for acceptance of deposits
- Annexure
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Companies generally raise funds through issue of equity or preference shares, debentures, and commercial papers and inter corporate loans. Deposits are also one of the sources available to a company to raise funds to meet the short term or long term requirements of the company. In order to protect the interest of the depositors and to stop the malpractices adopted by companies accepting deposits, the companies Act, 2013 read with rules made under Chapter V has introduced various conditions for acceptance of deposits by companies.

After going through these lesson students will be able to understand procedural and practical aspects relating to acceptance of deposits by companies and certain other matters related there.

ACCEPTANCE OF DEPOSITS

Regulatory Framework- A revisit

- (1) Section 73 to 76 of the Companies Act, 2013 (herein after called the Act) read with Rules made under Chapter V of the Companies Act, 2013 (herein after called 'the Rules') regulate the invitation and acceptance of deposits.
- (2) Proviso to Section 73(1) read with rule 1(3) of Companies (Acceptance of Deposits) Rules 2014 excludes from the provisions of this chapter banking Companies, non-banking financial companies as defined in the Reserve Bank of India Act, 1934 and registered with Reserve Bank of India, a housing finance company registered with National Housing Bank established under the National Housing Bank Act 1987 and any other company as may be specified by the government in this regard.
- (3) Section 2(31) of the Companies Act defines deposit to include any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India; The student may refer to the rules to know what is not a deposit [Rule 2(1)(c)]
- (4) Section 73 deals with acceptance of deposits from members. Section 73(2) states that a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the certain conditions as specified in section 73(2)(a) to (f).
- (5) MCA has clarified that amount received by private companies from their members, directors or their relatives prior to April 01, 2014 shall not be treated as deposits subject to the condition that relevant private company shall disclose in the notes to its financial statement the figure of such amounts and the accounting head in which such amount have been share in financial statement. Any renewable or acceptance of fresh deposits on or after April 1, 2014, shall however, be in accordance with the provision of Companies Act, 2013.
- (6) The conditions provided in section 73(2)(a) to (e) shall not be applicable to a private company and Specified IFSC public company which accepts from its members monies with 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.
- (7) Section 76 deals with acceptance of deposits from public by certain companies. An eligible company as defined in rule 2(1)(e) of Companies (Acceptance of Deposits) Rules, 2014 may accept deposit from persons other than its members. These companies need to comply with requirement of section 73(2) and subject to rules as prescribed.
- (8) "Eligible company" means a public company as referred to in sub- section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than 500 crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits;
- (9) Companies referred to in sub-section (2) of sections 73 and 76 need to comply with the Companies (Acceptance of Deposits) Rules, 2014.
- (11) No company under sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees for creating

security for the deposits [Rule 7]

- (12) Every eligible company intending to invite deposits from public shall obtain the rating from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public to ensure adequate safety . The rating shall be obtained every year during the tenure of deposits. [Proviso to section 76(1)]
- (13) Every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders. [Second proviso to section 76(1)]
- (14) Every company accepting deposits shall, from the date of such acceptance, keep at its registered office one or more separate registers for deposits accepted/renewed, in which there shall be entered separately in the case of each depositor. [Rule 14]
- (15) Every company to which Companies (Acceptance of Deposits) Rules, 2014 apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3. [Rule 16]
- (16) (A) Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director.
(B) Every private company shall disclose in its financial statement, by way of notes, about the money received from the director, or relatives of directors.
- (17) Section 76A provides for punishment for contravention of section 73 and section 76. Further, in case it is proved that officer of the company who is in default has willfully/knowingly contravened the provisions. He shall be liable for action under section 447 (punishment for fraud)

TEST YOUR KNOWLEDGE

Illustration

Please check which of the following source of funds are coming under the definition of deposits in case of a company.

- (a) Rs. 5 Crore from Government Agency, Financial institutions, Banks or by way of Commercial Paper.
- (b) Rs. 50 Lakhs by way of Share Application money
- (c) Rs. 50 Lakhs from one of its director by way of loan
- (d) Rs. 50 Lakhs from issue of bonds and debentures
- (e) Rs. 50 Lakhs by means of inter corporate deposit
- (f) Rs. 25 Lakhs from its employees.
- (g) Rs. 50 Lakhs as business advance from customers
- (h) Rs. 50 Lakhs as advance against consideration for an immovable property.
- (i) Rs. 25 Lakhs as security deposit for performance of provision of services
- (j) Rs. 50 Lakhs from its promoter.
- (k) Rs. 25 Lakhs raised by issue of non convertible debentures. These are not constituting charge on assets of the company.

Solution

- (a) The said amount is to be received or borrowed from any government agency or Financial Institution or Bank or by way of Commercial paper is not covered under deposits.
- (b) Company must allot share within 60 days of receipt of share application money or it must refund the share application money to the subscribers within 15 days from the date of completion of sixty days, otherwise, such amount shall be treated as a deposit.
- (c) Company can receive loan from its director (or relative of director of the private company) provided they give a declaration to the company that the loan given is from own funds and not from borrowed money.
- (d) Company can raise money by way of bonds and debentures provided amount is secured by a first charge

against property; or such bonds or debentures should be compulsorily convertible into shares within 10 years; otherwise it would come under the definition of deposits.

- (e) Inter corporate deposits are not covered in the definition of deposits
- (f) If amount received from employee doesn't exceed their total annual salary; and such deposit should be non-interest bearing security deposit it would not come under the definition of deposit.
- (g) Advance can be raised from customers however; such advance should be adjusted within 365 days from the date of receipt of advance. Otherwise it would be termed as deposits.
- (h) Such amount should be adjusted against such property only; otherwise it would be termed as deposits.
- (i) Security deposits are out of the ambit of definition of deposits. It is suggested to accept security deposits under specific agreement.
- (j) Amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank is not deposits subject to fulfillment of the following conditions, namely:-
 - (i) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
 - (ii) the loan is provided by the promoters themselves or by their relatives or by both; and
 - (iii) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;
- (k) This amount is not a deposit in term of rule 2(1)(c)(ixa) provided these non-convertible debenture are listed on recognized stock exchange.

QUANTUM OF DEPOSITS THAT CAN BE ACCEPTED

Chapter V divides the companies accepting deposits into two categories –

I. Companies accepting deposits from members [Section 73(2)] : Any company subject to compliance of provisions of this section may accept deposits.

II. Companies accepting deposits from public i.e. eligible companies only public and specified companies may accept deposits from public subject to compliance of provisions of this section from members. In case of private companies, the fulfillment of conditions given in section 73(2)(a) to (e) is exempted, in case it accepts from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account and also such company needs to file details of monies accepted to Registrar. [Section 76].

- (1) No **eligible company** shall accept or renew any deposit from its members, if the amount of such deposits together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds **10%** of the aggregate of the paid-up share capital, free reserves and securities premium account of the company and; [Rule 3(4)(a)]
- (2) No **eligible company** shall accept or renew any deposit from public, if the amount of such deposit other than the deposit received from members, together with the amount of deposits outstanding on the date of acceptance or renewal exceeds 25% of aggregate of the paid-up share capital, free reserves and securities premium account of the company. [Rule 3(4)(b)]
- (3) No **company** referred in section 73(2) shall accept or renew any deposits from its members if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 35% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. [Rule 3]

Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

- (4) No **Government company** eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the paid-up share capital, free reserves and securities premium account of the company. [Rule 3(5)]

The Quantum of deposits :

Type of company	Members	Public
Eligible Company	Upto 10% of aggregate of the paid up share capital, free reserves and securities premium account	Upto 25% of aggregate of the paid up share capital, free reserves and securities premium account
Company referred in section 73(2)	Upto 35% of aggregate of the paid up share capital, free reserves and securities premium account	Prohibited
Government Company (eligible under section 76)	–	Upto 35 % of aggregate of the paid up share capital, free reserves and securities premium account

It may be noted that private companies and public companies (other than eligible companies) are not allowed to accept deposits from public.

PROCEDURE OF ACCEPTANCE OF DEPOSITS

Keeping the procedures or steps of acceptance of deposits in view, companies can be segregated in to three types' viz. Private Company, Public company (other than eligible company) and eligible company. There are several procedural differences among these companies, which are discussed below.

Students are expected to get themselves well conversant with the Companies (Acceptance of Deposits) Rules, 2014, which is discussed in detail in lesson-20 (Deposits) of Company law in executive programme before studying the procedure of acceptance of deposits.

POINTS OF DIFFERENCE

Category of Company	Private Company as per (Section 73(2))	Public Company (other than eligible company as per (Section 73(2))	Public company (eligible company under section 76 of the Act)
Source of deposits	From directors and members	From directors and members	From directors, members and general public
Conditions for deposits to be taken from directors	It is allowed to be taken without any limit. However, director of the company or relative of the director of the private company has to furnish declaration at the time of money being given to the company that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.	It is allowed to be taken without any limit. However, director has to furnish declaration at the time of money being given to the company that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.	It is allowed to be taken without any limit. However, director has to furnish declaration at the time of money being given to the company that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

Conditions for deposits to be taken from shareholders	It is allowed to be taken subject to the limit of 35% of the paid up share and capital, free reserves and securities premium account. The compliance of condition as specified under (a) to (e) of section 73(2) of the Act are exempted in case it accepts from members monies not exceeding 100% of aggregate of the paid up share capital, free reserve and securities premium account. This is subject to compliance of Point (f) of 73(2) and Rules specified.	It is allowed to be taken subject to the limit of 35% of the paid up share capital, free reserves and securities premium account subject to the compliance of provisions of section 73(2) of the Act.	It is allowed to be taken subject to the limit of 10% of the paid up share capital, free reserves securities premium account subject to the compliance of provisions of section 73(2) of the Act. Provided that at any point of time, deposits shall not exceed 25% of the paid up share capital, free reserves and securities premium account.
Conditions for deposits to be taken from Public	Prohibited	Prohibited	It is allowed to be taken subject to the limit of 25% of the paid up share capital, free reserves and securities premium account. However, in case of Government company, who is eligible to accept deposits from public under section 76, it is allowed to be taken subject to the limit of 35% of the paid up share capital, free reserves and securities premium account.
Resolution	The company should pass a resolution in a general meeting.	The company should pass a resolution in a general meeting.	The company should pass a resolution in a general meeting .
Advertisement	Not necessary	Not necessary	Necessary
Circular	Circular shall be issued to its members by registered post with Acknowledgement due or by speed post or by electronic mode in Form DPT-1 and in addition to such issue of circular to publish the same in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company. [Rule 4]	Circular shall be issued to its members by registered post with Acknowledgement due or by speed post or by electronic mode in Form DPT-1 and in addition to such issue of circular to publish the same in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company. [Rule 4]	Every eligible company intending to invite deposits shall issue a circular in the form of an advertisement in Form DPT 1 for the purpose in English language in an English newspaper having country wide circulation and in vernacular language in a vernacular newspaper having wide circulation in the State in which the register office of the company is situated, and shall also place such Circular on the website of the company, if any.

Display of circular on website	Optional	Optional	Mandatory, if any
Credit Rating	*Required to be taken before the submission of the circular to the registrar as is an essential disclosure of the said circular	Required to be taken before the submission of the circular to the registrar as is an essential disclosure of the said circular	Required to be taken (including the rating of its net worth, liquidity and ability to pay its deposits on due date) before the submission of the circular to the registrar as is an essential disclosure of the said circular. Every eligible company shall obtain at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies along with the return of deposits in Form DPT- 3, The credit rating referred to above shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits, from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, issued by the Reserve Bank of India, as amended from time to time. [Rule 3(8)]

* Exempted in case private company accepts from its members monies not exceeding 100 per cent of aggregate of paid-up share capital and free reserves.

So far procedure of acceptance of deposits is concerned, there are some procedural similarities exist among Private Company, Public company (other than eligible company) and eligible company, which are discussed below.

POINTS OF SIMILARITY

Category of Company	Private Company	Public Company (other than eligible)	Public company (eligible company under section 76 of the Act)
Tenure of deposits	The deposit shall not be repayable on demand or upon receiving a notice within a period of less than 6 months and more than 36 months. However, to meet the short requirements of fund, such companies can accept or renew deposits for a period of less than six months but not less than three months and such deposits should not exceed ten per cent of aggregate of paid up capital and free reserves of the company.		
Statement	*Along with the circular a statement shall be circulated which shall contain the financial position of the company, the credit rating, the number of depositors and the amount due.		

Registration of circular	*The circular signed by majority of directors or their agents duly authorised along with the statement shall be submitted to registrar 30 days before the date of such issue.
Validity of circular	*6 (six) months from the end of the financial year in which it was issued or the date on which the AGM is held whichever is earlier.
Deposit insurance	*Deposit insurance shall be taken 30 days prior to the date of issuance of the circular or renewal, which shall ensure the repayment of deposits. Companies may accept deposit with insurance contract until 31st March, 2017 or till availability of deposit insurance product whichever is earlier.
Security	If secured deposits are invited then the company shall create a charge on its assets referred to in Schedule III excluding intangible assets which shall not be less than the amount remaining unsecured by deposit insurance.
Quoting of "Unsecured Deposit"	Where the proposed deposits is unsecured or is partly secured, the deposits shall be termed as "unsecured deposits" and shall be quoted in every circular, form, advertisement or in any other document relating to invitation or acceptance of deposits.
Deposit repayment reserve account	*On or before 30 th April of each year, a sum not less than 15% of the amount of deposits maturing in the current financial year and the next financial year shall be deposited in a scheduled bank in a separate account called deposit repayment reserve account which shall be free from charge or lien.
Register	One or more separate registers for deposits accepted or renewed shall be maintained at the registered office and entries shall be made within 7 days from the date of issuance of deposit receipt.
Return of deposits	A return shall be filed on or before 30 th June of every year with the Registrar in Form DPT- 3 along with fee giving the status as on 31st March of that year duly audited by the auditor of the company.
Penal rate of interest	A penal Rate of 18% p.a. shall be payable for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.
Premature payment	In case of premature payment of deposits, 1% shall be reduced from the interest agreed to be paid.

* Exempted for private companies if it accepts from its members monies not exceeding 100 per cent of aggregate of paid-up share capital and free reserves.

Procedure of acceptance of deposits can be discussed under two broad headings i.e. procedure of acceptance of deposits from members and procedure of acceptance of deposits from public (other than members) because non-eligible companies are allowed to accept deposits from its directors, members and their relatives whereas eligible companies are allowed to accept deposits from members as well as public.

PROCEDURE OF ACCEPTANCE OF DEPOSITS FROM MEMBERS

A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members.

The procedure to accept deposits from members can be summarized as under:-

1. The companies intending to invite deposits from its members shall convene a Board meeting to consider and

approve the business to propose and accept deposits from members and decide the day, date, time and place of the general meeting.

2. Issue notice of general meeting to the members of the company.
3. Hold the general meeting and pass resolution for acceptance of deposits.
4. Comply with the Rules prescribed in consultation with RBI and terms and conditions mutually agreed by the company and deposit holders either for acceptance or for repayment of deposits.
- *5. Issue circular to the members of the company including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards depositors in respect of any previous deposits and such other particulars as may be prescribed. These details indicate the soundness of the company or a warning about risks involved. The circular shall be published at least once in English language in a leading English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.
6. File the copy of aforesaid circular in the **Form DPT-1** along with such statement with the Registrar within thirty days before the date of issue of circular.
7. In case, a company does not secure the deposits or secures such deposit partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.
- *8. A company inviting secured deposits shall provide for security by way of a charge on its assets for the due repayment of the amount of deposit and interest thereon. The company shall submit **Form CHG-1** with Registrar for assets other than intangible assets and for an amount which shall not be less than the amount remaining unsecured by the deposit insurance. Secured deposits including interest thereon can in no case exceed the market value of the charged assets assessed by the registered valuer.
9. After the expiry of 30 days of filing Form DPT-1, the circular in Form DPT-1 along with application form is sent to all members by registered post with acknowledgement due/speed post/electronic mail.
10. Collect duly signed application form along with money from the members.
11. Issue receipts of deposits within 21 days of the receipts of money/realisation of cheque.
12. Maintain register of deposits at its registered office which shall contain the details as prescribed under rule 14 Companies (Acceptance of Deposits) Rules, 2014 from the date of such acceptance.
13. Pay interest as per the rate proposed on agreed terms.
- *14. Deposit such sum which shall not be less than fifteen percent of the amount of its deposits maturing during the financial year and the financial year next following and keeping it in a separate bank account called deposit repayment reserve account.
- *15. Company inviting deposits shall enter into a contract providing for deposit insurance at least thirty days before the issue of circular or advertisement for an amount covering minimum twenty thousand rupees for each deposit. (exempted till March 31, 2017 or availability of deposit insurance product, whichever is earlier)
16. Submit return of deposits in **Form DPT-3** on or before 30th June each year for information as on 31st March of respective year.

* Exempted for private companies if it accepts from its members monies not exceeding 100 per cent of aggregate of paid-up share capital and free reserves and the company files the details of monies so accepted to Registrar.

CONDITIONS FOR ACCEPTANCE OF DEPOSITS FROM PUBLIC (OTHER THAN MEMBERS)

A public company having net worth of not less than Rs. 100 Crores or turnover of not less than Rs. 500 Crores (Eligible Company) and which has obtained the prior consent of the members in a general meeting by means of special resolution and also filed the special resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits. Eligible company, which is accepting deposits within the limit specified under clause (c) of sub-section (1) of section 180 (*Borrowing Powers*) may accept deposits by means of an ordinary resolution.

Further, no Government company eligible to accept deposits under section 76 shall accept or renew any deposits, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five percent of the aggregate of its paid up share capital and free reserves.

The procedure to accept deposits from public (other than members) can be summarised as under:-

1. Convene a Board meeting to consider and approve the business to propose and accept deposits from public and to decide the day, date, time and place of the general meeting.
2. Hold the general meeting and pass special resolution, for acceptance of deposits.
3. Submit **Form MGT-14** with the Registrar of Companies within 30 days of passing the resolution.
4. Once the proposal is approved, Directors are required to approach to the credit rating agency for the grant of rating, execution of deposit insurance contract, appointment of depositor trustee and execution of trust deed, if the deposits are secured, appointment of registered valuer, discussion and preparation of circular for the issue of deposits may be given.
5. Circular shall be issued to its members of the company by registered post with acknowledgement due or by speed post or by electronic mode in **Form DPT-1** and in addition to such issue of circular to publish the same in one English newspaper and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company. The eligible companies have to file a copy of the text of advertisement signed by a majority of directors with the Registrar before 30 days of publication. They shall upload the same on their website, if any.
6. File the copy of aforesaid circular in the **Form DPT-1** along with such statement with the Registrar within thirty days before the date of issue of circular.
7. In case, a company does not secure the deposits or secures such deposit partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.
8. The company shall execute a deposit trust deed in **Form DPT-2** at least seven days before issuing circular or circular in the form of advertisement.
9. Eligible company inviting secured deposits shall provide for security by way of a charge on its assets for the due repayment of the amount of deposit and interest thereon. The company shall submit **Form CHG-1** with Registrar for assets other than intangible assets and for an amount which shall not be less than the amount remaining unsecured by the deposit insurance. Secured deposits including interest thereon can in no case exceed the market value of the charged assets assessed by the registered valuer.
10. Eligible companies proposed to accept deposits from public is required to issue advertisement one in English newspaper having country wide circulation and one newspaper in vernacular language having wide circulation in the state in which the registered office of the company is situated. Said circular/ advertisement shall be valid till before the expiry of six months from the end of respective financial year in which it was issued or up to the date of Annual General Meeting (or last due date of AGM), if not held) wherein the financial statement is laid before members, whichever is earlier.

11. Upload the circular/advertisement on the company Website, if any.
12. Collect duly signed application form along with money from the members.
13. Issue receipts of deposits within 21 days of the receipts of money/realisation of cheque.
14. Maintain register of deposits at its registered office which shall contain the details as prescribed under Rule 14 Companies (Acceptance of Deposits) Rules, 2014, from the date of such acceptance.
15. Pay interest as per the rate proposed on agreed terms.
16. Deposit such sum which shall not be less than fifteen percent of the amount of its deposits maturing during the financial year and the financial year next following and keeping it in a separate bank account called deposit repayment reserve account.
17. Company inviting deposits shall enter into a contract providing for deposit insurance at least thirty days before the issue of circular or advertisement for an amount covering minimum twenty thousand rupees for each deposit.

However, Companies may accept the deposits without deposit insurance contract till 31st March, 2017.

18. Submit return of deposits in **Form DPT-3** on or before 30th June each year for information as on 31st March of respective year.

CHECKLIST OF SECRETARIAL COMPLIANCE FOR ACCEPTANCE OF DEPOSITS AS PER COMPANIES ACT, 2013:

Check list of secretarial compliance for acceptance of deposits under Companies Act, 2013, are discussed below.

The Company Secretary should check:

1. Whether proper Board meeting has been held and the matter of acceptance of deposit has been proposed and issue of notice for holding general meeting for obtaining approval of the shareholder has been taken place.
2. Whether general meeting has been held and approval of the shareholders by means of a special or ordinary resolution has been passed.
3. Whether the said resolution has been filed with Registrar in **Form MGT-14** within 30 days of passing of such resolution.
4. Whether Board meeting has been held to obtain the approval for the draft Circular/Form of Advertisement from the Board and the said draft Circular/Form of Advertisement has been signed by majority of the directors of the Company.
5. Whether copy of Circular/Form of Advertisement approved by the Board has been filed with the Registrar of Companies in **Form DPT-1** for registration.
6. Whether one or more deposit trustees for creating security for the secured deposits has been appointed and the company has executed a deposit trust deed in **Form DPT-2** at least seven days before issuing circular or circular in the form of advertisement.
7. Whether the company has enter into a contract providing for deposit insurance unless exempted at least thirty days before the issue of circular or advertisement with Insurance Company. (Exempted till 31st March, 2017)
8. Whether the company has obtain the rating unless exempted, (including its net worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the Company.
9. Whether the company has issued circular/form of advertisement after 30 days from the date of filing of a

copy of Circular/Form of Advertisement with the Registrar.

10. Whether the circular has been issued to members by registered post with acknowledgement due or speed post or by electronic mode or publish the circular in the form of an advertisement in Form DPT-1 and in addition to such issue of circular the company has published the same in one English newspaper having country wide circulation and one vernacular language in vernacular newspaper having wide circulation in the state of registered office of the company.
11. Whether the company has uploaded the copy of the circular on the Company's website, if any.
12. Whether the company has issued deposit receipt in the prescribed format and under the signature of officer duly authorized by Board, within a period of two weeks from the date of receipt of money or realization of cheques.
13. Whether the company has made entries in the register as per the instruction provided in the rules within seven days from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the Company or by any other officer authorized by the Board.
14. Whether the company has filed deposit return in Form DPT-3 by furnishing information contained therein as on 31st day of March duly audited by auditors before 30th June every year.
15. Whether the company has prepared the statement regarding deposits existing as on the date of commencement of the act in Form DPT-4.

These are the some of the checklist which are to be taken care of from compliance point of view.

ANNEXURE

SPECIMEN RESOLUTION FOR ACCEPTANCE OF DEPOSITS FROM MEMBERS AND/OR PUBLIC

“RESOLVED THAT pursuant to the provisions of Section 73 and 76 of the Companies Act, 2013 (the Act) read with the Companies (Acceptance of Deposits) Rules, 2014 (the Rules) and other applicable provisions, if any, and subject to such conditions, approvals, permissions, as may be necessary, consent of the members be and is hereby accorded to the Company to invite/accept/renew/receive money by way of unsecured/secured deposits from its members and public.

RESOLVED FURTHER THAT Mr. C, Chairman & Managing Director, be and is hereby authorized to issue the circular or circular in the form of advertisement, which has been approved by the Board of Directors of the company at their meeting held on ____ the (day) of ____ (month), 2014 (year) and which delineates the silent features of the deposit scheme of the company and other relevant particulars as prescribed by the Act and the Rules.

RESOLVED FURTHER THAT Mr. C, Chairman & Managing Director, be and is hereby authorized to have the circular or circular in the form of advertisement, which has been duly signed by the majority of directors, filed with the Registrar of Companies, NCT of Delhi & Haryana, New Delhi, pursuant to the Rules, and to publish the same in English language in Times of India (Delhi edition) and in Hindi in Dainik Jagran (Delhi edition).

RESOLVED FURTHER THAT for the purpose of giving effect to this Resolution, the Board of Directors be and is hereby authorized to do such acts, deeds, matters and things as Board of Directors may in its absolute discretion consider necessary, proper, expedient, desirable or appropriate for such invitation/acceptance/ renewal/ receipts as aforesaid and matters incidental thereto.”

(The aforesaid specimen resolution is drafted on the assumption that the registered office of the company is in the state of Delhi and Times of India (Delhi edition) and Dainik jagran (Delhi edition) are widely circulated newspaper in the state of Delhi.)

LESSON ROUND UP

- Deposit includes any receipt of money by way of deposit or loan or in any other form by a company but does not include such categories of amount prescribed in consultation with RBI
- Section 73 prohibits a company to invite, accept or renew deposits from public. This prohibition however shall not apply in case of banking company and non-banking financial company and such other company as the Central Government may specify.
- A company can invite deposits from its members subject to the passing of a resolution in general meeting subject to some conditions.
- The company inviting deposits shall issue a circular to its members in Form DPT-1
- The company inviting deposits shall enter into a contract for providing deposit insurance at least 30 days before the issue of circular or advertisement or before the date of renewal. (Exempted till 31st March, 2017)
- For appointing deposit trustees the company shall execute deposit trust deed in Form DPT-2.
- The company accepting deposits shall maintain at its registered office one or more registers for deposits accepted or renewed.
- The Return of Deposits shall be filed in Form DPT-3 with the Registrar.
- Any public company having a net worth of not less than 100 crore rupees or a turnover not less than 500 crore rupees can accept deposits from the public, such company shall obtain a prior consent of its members in general meeting through Special Resolution.
- Such company shall obtain the Credit rating from a recognized credit rating agency.
- Every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules.
- Clauses (a) to (e) of sub-section (2) of section 73 shall not apply to private company which accepts from its members monies not exceeding 100 per cent of aggregate of paid-up share capital and free reserves and such company files the details of monies so accepted to Registrar.

SELF TEST QUESTIONS

1. Draft the resolutions for:
 - (a) Acceptance of deposits from members
 - (b) Acceptance of deposits from public
2. Make a list of amounts those are excluded from the definition of “deposit” .
3. Prepare a check list of secretarial compliance to be made by a company secretary for acceptance of deposits.
4. What is the procedure for accepting deposits from members?

Lesson 7

Membership and Transfer/Transmission of Shares

LESSON OUTLINE

- Part I – Membership
- Part II – Transfer of Shares
- Part III – Transmission and Nomination of shares
- Part IV – Dematerialisation of shares
- Part V – Compliances relating to insider trading and takeovers
- Annexures – Special Resolutions
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

A member means a shareholder of a company whose name is entered in the register of members. A person holding equity shares of a company and whose name is entered in the records of a depository as a beneficial owner of the share is deemed to be a member of the company. There are various modes of acquiring membership. Also one can cease to be a member of the company by various methods. This study will enable you learn all about modes of becoming member, procedure for variation of members' rights, transfer of shares, transmission etc.

PART I - MEMBERSHIP

Meaning of Members

A company is composed of members, though it has its own entity distinct from the members. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity.

In the case of a company limited by shares, the shareholders are the members. The terms “members” and “shareholders” are usually used interchangeably. Generally speaking, every shareholder is a member and every member is a shareholder. However, there may be exceptions to this statement, e.g., a person may be a holder of share by transfer but would not become member until the transfer is registered in the books of company in his favor and his name is entered in the register of members. Similarly, a member who has transferred his shares, though he does not hold any shares continues to be member of the company until the transfer is registered and his name is removed from the register of members maintained by the company under section 88 of the Companies Act, 2013.

In a company limited by guarantee, the persons who are liable under the guarantee clause in its memorandum of association are members of the company.

In an unlimited company, the members are the persons who are liable each in proportion to the extent of their interests in the company, to contribute the sums necessary to discharge in full, the debts and liabilities of the company, in the event of its being wound up.

The terms ‘contributory’ and ‘member’ are not interchangeable; while every member would become a contributory the converse would not be true, unless the name of the contributory is entered in the register of members. [*Rajdhani Grains & Jaggery Exchange Ltd., In re*, 1983 54 Com Cases 166 (Del)]

Definition of ‘Member’

According to Section 2 (55) of the Companies Act, 2013, ‘member’ in relation to a company, means –

- (i) **Those who deemed to have agreed to become member:** The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on registration, shall be entered as members in its register of members;
- (ii) **Those who agrees in writing to become member:** Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members shall, be a member of the company;
- (iii) **Those who are beneficial owner:** Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

Thus, there are two important elements which must be present before a person can acquire membership of a company viz.,

- (i) agreement in writing to become a member; and
- (ii) entry of the name of the person, in the register of members of the company.
 - In the case of subscriber to the memorandum, no agreement besides the memorandum is necessary. He is deemed to be the member of the company. A person other than the subscriber to the memorandum may acquire its membership by agreeing to become a member. Both these conditions are cumulative. [*Balkrishan Gupta v. Swadeshi Polytex Ltd.* (1985) 58 Com Cases 563].
 - The person desirous of becoming a member of a company must have the legal capacity of entering into an agreement in accordance with the provisions of Section 11 of the Indian Contract Act, 1872 which

provides that: “Every person is competent to contract, who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.”

- Both these conditions are cumulative as per the decision of the Supreme Court in *Balkrishan Gupta v. Swadeshi Polytex Ltd.* AIR 1985 SC 520.
- In case, these two conditions are not satisfied, the person in question cannot claim the status of member. [*Lalithamba Bai v. Harrisons Malayalam Ltd.* (1988) 63 Com Cases 662 (Ker)]
- It is abundantly clear that no one can become a member unless he has agreed in writing to become a member of the company. *Shrikumar Malavalli v. CRCW Search Technologies (P.) Ltd.* (2003) 56 CLA 1 (CLB) (Chennai). The words ‘in writing’ indicate, by necessary implication, that an application for allotment of shares should be made in writing. [*Kumaran Potty v. Venad Pharmaceuticals Chemicals Ltd.* (1989) 65 Com Cases 246 (Ker). An agreement to become a member can no longer be inferred or implied from conduct.
- The requirement prescribed by section 2(55) that a person must give his consent in writing for allotment of shares applies only when a person becomes a member for the first time. The provision does not apply to persons who are already shareholders. Further, in the case of a subscriber, no application or allotment is necessary to become a member. [*Vijay Kumar Narang v. Prakash Coach Builders Pvt. Ltd.* (2005) 128 Com Cases 976 (CLB).]

MODES OF ACQUIRING MEMBERSHIP

As per section 2(55) of the Companies Act, 2013, a person may acquire the membership of a company:

- (a) by subscribing to the memorandum of association; or
- (b) by agreeing to become a member:
 - (i) by making an application to the company for allotment of shares, or
 - (ii) by executing an instrument of transfer of shares as transferee, or
 - (iii) by consenting to the transmission of shares of a deceased member in his name; or
 - (iv) by acquiescence or estoppel and on his name being entered in the register of the members of the company,
- (c) by holding equity share capital of the company and on his name being entered as beneficial owner in the records of the depository under the Depository Act, 1996.

Procedure for becoming a member by subscribing to the Memorandum of Association

- (a) The subscribers are selected by the promoters of a Company;
- (b) The subscribers (minimum, two for a private company and seven for a public company) have to agree to take minimum one share in share capital of the company to be registered and state the number of shares agreed to be taken in the column meant for this purpose in the Memorandum of Association;
- (c) The subscriber has to sign and write in his/her hand name in full, father’s/husbands’ name, address in full, occupation in the column meant for this purpose;
- (d) On registration of the company, the subscribers become members of the company;
- (e) The subscribers have to pay the money for the shares agreed to be taken by them;
- (f) The names of the subscribers shall be placed on the register of members on registration of the company.

PROCEDURE FOR BECOMING A MEMBER BY MAKING AN APPLICATION FOR ALLOTMENT OF SHARES

- (a) In case of a listed company, the investor should read carefully the terms and conditions of the prospectus for issue of Share Capital by a company and also risk factors, management background, working of other companies under the same management and the objectives of the Issue etc. In other companies, he must study the terms of the issue.
- (b) If he decides to invest in the share capital, then he should read carefully the instructions for filling in the Application Form and complete the same in all respects and arrange to deposit the amount of share application in full as per the terms of the Issue.
- (c) Keep a photo copy of the Application form for records.
- (d) On allotment, the applicant becomes a member of the company for the shares so allotted in response to the application.
- (e) On becoming a member, he/she shall have all the rights to which a member is entitled to.

PROCEDURE FOR BECOMING A MEMBER BY TRANSFER OF SHARES BOUGHT FROM THE EXISTING MEMBER(S)

- (a) After deciding to buy shares of a company, the investor (buyer) should check up whether the shares of such company are under compulsory or optional demat form or are in physical form only.
- (b) Place order with share broker for the number of shares decided to be bought and also inform Depository Participant No. and Client No. for crediting to account with Depository Participant in case of demat shares.
- (c) If the shares are bought in physical form on receipt of the proper instrument of transfer duly stamped dated and executed in SH-4 and share certificates, the Securities Transfer Form are to be completed in all respects and share transfer stamps of requisite value are affixed in accordance with the consideration of the shares bought.

In case the shares are in demat form, the delivery instructions of the seller is required to be given to the respective DP by the seller with the details of the buyer's, Client ID & DP No. and the shares are automatically transferred to the buyers demat account.

- (d) Keep photo copies of the Securities Transfer Form and share certificates (both sides) for record.
- (e) Send the Securities Transfer Form and share certificates to the Company at its registered office or to its Share Transfer Agents for registration of transfer in the name of transferee(s) by registered post with acknowledgement due.
- (f) On credit of shares in account with Depository Participant (DP) in case of demat shares the buyer shall become the beneficial owner of the company and have all the rights of a member in that company.

Or

On share duly registered in the name(s) of the buyer(s), the buyer(s) shall become the member of the company and have all rights of a member in that company. In the case of a person purchasing shares, registration of the transfer with the company is necessary to enable him to become a shareholder or member. As long as his name is not entered in the register of members he is not a member. [*Balkrishan Gupta v. Swadeshi Polytex Ltd.* AIR 1985 SC 520.]

- (g) In case of unlisted public companies or private companies, the provisions regarding transfer of shares as contained in the Articles of Association have to be complied with.

PROCEDURE FOR BECOMING A MEMBER BY TRANSMISSION OF SHARES IN HIS NAME ON SUCCEEDING TO THE ESTATE OF DECEASED OR BANKRUPT MEMBER AS SUCCESSOR/ NOMINEE OR CREDITOR

- (a) On the death of a member of the company, the successor/nominee of the deceased has to inform the company/the Depository Participant together with a certified copy of the death certificate and probate of the will/ Succession Certificate for requesting transmission of the shares held by the deceased in his name.
- (b) On receipt of the reply from the company/the (DP), the successor/nominee shall have to follow the procedure as may be advised for the transmission of the shares.
- (c) In case of nominee, if nominee decides to become a member of the company for the shares of the deceased, an application is to be made to the company/the DP. If such nominee has already opened a Demat Account with a DP, the nominee should mention DP No. and Client No. in the Application to the DP of the deceased. If such nominee has no Demat Account with any DP, the nominee should open a Demat A/c with a DP and apply for transmission of the shares.
- (d) In case of successor to the deceased, the successor has to send succession certificate/together with an application for transmission of the shares to the company/the DP with whom the deceased had account. If the successor has no Demat Account, an account should be opened with the same DP of the deceased.
- (e) On completion of all the requirements for transmission of shares held by the deceased, the nominee/successor should receive share certificate(s) duly endorsed on transmission or statement of the shares from the DP.
- (f) Thereafter, the nominee/successor shall become a member of the company and shall have all the rights of a member in that company.
- (g) In case of unlisted public companies or private companies, the provisions regarding transmission of shares as contained in the Articles of Association have to be complied with.
- (h) In case, an application is made by the transferor done and relates to partly paid shares, the transfer shall not be registered unless the company gives the notice of the application, in form SH-5, to the transferee. The transferee is required to give no objection to the transfer within two weeks from receipt of notice.
- (i) The company is required to deliver the certificates of all services allotted, transferred or transmitted –
 - (a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
 - (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;
 - (c) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;
 - (d) within a period of six months from the date of allotment in the case of any allotment of debenture:

In case, the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

Note: In case of a bankrupt member, the creditor shall have to follow the same procedure for becoming a member for shares held by the bankrupt member in the company except that a certified copy of the order of the Court shall be sent to the company/the DP of the bankrupt member. The rest of the procedure specified above remains the same.

PROCEDURE FOR BECOMING A MEMBER BY ACQUIESCENCE OR ESTOPPEL

A person can also become a member of the company under the doctrine of the acquiescence or estoppel. If any person allows his name without sufficient cause, to be on the register of members of the company or otherwise holds him out or allows himself to be held out as a member, he will become member of the company. In such a case, such person is estopped from denying his membership.

CESSATION OF MEMBERSHIP

A member ceases to be a member of a company when his name is removed from the register of members or register of beneficial owners. Cessation of membership may occur in following ways:

- (i) **Transfer of shares by sale or otherwise:** When the member signs the instrument of transfer and delivers it together with relevant share certificate(s) to the person to whom he intends to transfer the shares or broker as the case may be. In case of the shares held in the demat form, the members issue Delivery Instruction on the prescribed form to the Depository Participant (DP) with whom he has his Account for such shares. In the case of demat form, the name of the member shall be removed from the Register of beneficial owners. In the case of Physical Form, the name of the member shall be removed from the register of members only on registration of the shares in the name of the transferee.
- (ii) **Forfeiture of shares:** If a member does not pay the allotment/call money on the shares held by him in the company, the company is empowered to forfeit such shares for nonpayment of the due amount by the member after complying with the relevant procedure in this regard.
- (iii) **Sale of shares under lien:** If company has exercised lien on the shares of a member in accordance with its Articles of Association, the member ceases to be a member on removal of his name from the register of members/beneficial owners if the company enforces its lien by way of sale of such shares.
- (iv) **Death/Insolvency :** A member ceases to be a member of the company on removal of his name from the register of members/ beneficial owners and entering the name of the nominee/ successor or creditor in the register of member/ beneficial owners in his place. The nominee/successor or creditor shall follow the same procedure as stated in case of transmission of shares.
- (v) **Conversion of shares into share warrants/stocks:** If a company subject to its Articles of Association converts its fully paid equity shares into share warrants or stock, the names of the members are struck from the register of members/beneficial owners. Consequently, the members cease to be members of the company on and from the date of such conversion.
- (vi) **Buy back of shares:** If a company, subject to its Articles of Association and the provisions of section 68 of the Companies Act, 2013, buys back its own shares from its existing members, then such members who offer all their shares in the company for sale cease to be members of the company on cancellation of such bought out shares.
- (vii) **Purchase of Shares under the Court order:** If the shares of a member are purchased by another member or the Company, itself under the order of the Court under Section 242 of the Companies Act, 2013, such member ceases to be a member of such company on removal of his name and placing of the other person's name in the register of members/beneficial owners.
- (viii) **Dissolution/Winding up/Striking off the name of the Company:** If a company is dissolved, wound up or its name has been struck off from the register of the Companies by the Registrar of Companies; the members cease to be the members of such a company. In the case of winding up of a company, the members cease to be members of such company but they remain liable as contributory and/or entitled to claim share in the surplus, if any.

A member does not cease to be a member merely because winding up of the company has commenced.

He continues to be a member of the company so long as the requirements of section 41 of Companies Act, 1956 [corresponding to section 2(55) of Companies Act, 2013] read with section 150 of Companies Act, 1956 [corresponding to section 88 of Companies Act, 2013] are complied with. [*National Steel and General Mills v. Official Liquidator*, (1990) 69 Com Cases 416 (Del)].

- (ix) **Cancellation of Contract of membership:** If a member rescinds the contract of membership on the ground of fraud, misrepresentation, genuine mistake or irregular allotment, such member ceases to be a member of the company on removal of his name from the register of members/ beneficial owners.

DISPUTE REGARDING TITLE OF SHARES AND ITS RESOLUTION

- Under section 2(55) of the Act, a person cannot be made a member unless his name is entered on the register as a member. If one is a member in the books of the company, it is he alone who would be entitled to exercise the rights of a shareholder, viz. to vote as such or to receive the dividend payable in respect of the share and it certainly follows that he alone is liable for share calls or to be put on the list of contributories in case the company is wound up. Although a member be merely a trustee to the knowledge of the company, he is liable for calls and other obligations of his membership. [*Murshidabad Loan Office Ltd. v. Satish Chandra Chakravarty* (1943) 13 Com Cases 159 (Cal): AIR 1943 Cal 440].
- Where the title to shares in question was in dispute, the appellant was directed to take necessary steps to establish his title first and then approach the tribunal. Upon the appellant getting the title established through the court, the appeal filed under section 111 of Companies Act, 1956 [corresponding to section 58 of Companies Act, 2013] was allowed and the company was directed to register the transfer in the appellant's name. [*Amar Nath Berry v. Orissa Textile Mills Ltd.* Appeal No. 21 of 1972]
- In another case, Company Law Board has prescribed certain tests to be applied in case of dispute as to title. CLB has held that in case of a dispute as to whether the petitioner is a shareholder or not, when the name is not shown on the register of members; certain tests are to be applied as to (1) whether the person is in possession of the original share certificates to claim the membership, (2) whether there are independent records to establish that he is a member of the company, (3) whether the company has treated the petitioner as a member of the company in the past. [In *Banford Investment Ltd. v. Magadh Spun Pipe Ltd.* (1998) 93 Com Cases 685 (CLB)].
- It is stated in Halsbury's Laws of England 4th edition Para 392 that the Directors of a company may rectify the register of members without any application to the court if there is no dispute and the circumstances are such that the court would order rectification. Where a person on the register of members has a right to rectification and the company itself recognises that right, it is not essential for a valid rectification of the register that an order of the court should be sought and obtained. [*Reese River Silver Mining Company v. Smith* (1869) LR 4 HL 64]

EXPULSION OF MEMBER

- A question had arisen as to whether a public limited company has powers to insert a clause in its articles of association relating to expulsion of a member by the Board of directors of the company where the directors are of the view that the activities or conduct of such a member is detrimental to the interests of the company.
- The then Department of Company Affairs (Now Ministry of Corporate Affairs) clarified that an article for expulsion of a member is opposed to the fundamental principles of the Company Jurisprudence and is *ultra vires* the company, the reason being that such a provision militates against the provisions of the Companies Act relating to the rights of a member in a company.
- According to Section 6 of the Companies Act, the Act overrides the memorandum and articles of

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association and any provision contained in these documents repugnant to the provisions of the Companies Act, is void.

- The erstwhile Department of Company Affairs has, therefore, clarified that any assumption of the powers by the Board of directors to expel a member by alteration of articles of association shall be illegal and void. (Circular No. 32/7 dated November 1, 1975).

RIGHTS OF MEMBERS

According to section 47(1), subject to the provisions of section 43, sub-section (2) of section 50 and sub-section (1) of section 188,—

- (a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and
- (b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

Section 47(1)(b) shall apply subject to the modification on that no member shall exercise voting rights on poll in excess of 5% of total voting rights of equity shareholder.

According to section 47(2), every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company:

- Provided that the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares:
- Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company. [Exemption to private company under section 462 of Companies Act, 2013] vide notification F.No.1/i/2014-CLV dated 5.06.2015

Section 47 shall not apply to a Specified IFSC public company, where memorandum of association or articles of association of such company provides for it. [Notification Date 4th January, 2017]

VARIATION OF MEMBER'S RIGHTS

According to section 48(1), where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

- (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
- (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

Procedure for Variation of Members' Rights

1. Check the Memorandum and Articles of Association of the company, whether any of them authorizes

the company to vary the rights attached to any class of shares and such rights of the company are not prohibited by either of them and also by the terms of issue of that class of shares. If not, then, alter the Articles of Association of the company to that effect.

2. Convene a Board Meeting after giving notice to all the directors of the company as per Section 173 of the Act and in the case of a listed company, also to the stock exchanges for consideration of the variation of the rights of the holders of issued shares of a particular class. Decide the way to adopt for variations, either through:
 - (a) obtaining written consent of the holders of not less than three-fourths of the issued shares of that class; or
 - (b) convening a separate meeting of the holders of the issued shares of that class for passing a special resolution thereat.
3. If the Board approves the first method as mentioned 2(a) above, then:
 - approve the resolution for circulation among the holders of the issued shares of that class, and
 - circulate such resolution amongst the holders and obtain their approval in writing of at least three-fourths of the issued shares of that class.
4. If the Board approves the second method as mentioned in 2(b) above, or the company fails to obtain written approval from the holders of not less than three-fourths of the issued shares of that class then —
 - authorize the company secretary to convene a separate meeting of the holders of the issued shares of that class; and
 - approve the notice of such meeting containing special resolution with an explanatory statement relating thereto and a proxy form.
5. Hold the separate meeting of the holders of issued shares of that class and pass special resolution so proposed by three-fourths majority of the holders present.
6. A copy of the proceedings of the general meeting should also be sent to the stock exchange.
7. In both the cases, file Form No. MGT. 14 with certified copy of the resolution so approved or certified copy of the special resolution and explanatory statement within thirty days from the date of approval or the date of passing special resolution, as the case may be, together with requisite filing fees with the concerned Registrar of Companies.
8. Ensure that the said e-form is filed electronically and copy of the special resolution and explanatory statements are filed with the said e-form as attachments.
9. Ensure that the said e-form is digitally signed by the managing director or director or manager or secretary of the company duly authorized by the Board of directors.
10. Further ensure that the said e-form is certified by a chartered accountant or a cost accountant or a company secretary in whole-time practice by digitally signing the said e-form.
11. If the company is a listed company, then ensure that the aforesaid special resolution is passed only through postal ballot.
12. Inform the stock exchange where the shares of that class are listed about the variation in the members' rights thereof.
13. If variation affects the rights of the holders of other class of shares, simultaneously obtain consent or approval from them.
14. On variation becoming effective, make necessary changes in all the papers, documents, registers etc.

CANCELLATION OF MEMBER'S RIGHTS

According to section 48(2), where the holders of not less than ten percent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal. An application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

Procedure for Cancellation of the Variation in the Members' Rights

- (1) Ensure that the application to the Tribunal is made by the holders of not less than ten percent of the issued shares of that class who did not consent to or vote in favor of the special resolution for the variation. For brevity, such holders are called as dissentient shareholders.
- (2) The petition is required to be made within twenty-one days after the date on which the consent was given or the special resolution was passed to have the variation cancelled.
- (3) The application may be made by all the dissentient shareholders or by one or more acting on behalf of the other dissentient shareholders.
- (4) If the application is made by one or more of them, then the letter of authority from other dissentient shareholders should be annexed to the application.
- (5) The names, addresses and the number of shares held by each one of them are to be set out in the application or a list of them may be annexed as an Annexure to the application.
- (6) Ensure that the application sets out the following –
 - particulars of registration of the company;
 - authorised capital of the company, the different classes of shares in which it is divided and the rights attached to each class of shares;
 - provisions of the Memorandum of Association or Articles of Association authorising the variation of the rights attached to the various classes of shares;
 - total number of shares of the class whose rights have been varied;
 - nature of variation made and so far as may be ascertained by the petitioner;
 - number of the shareholders of the class who have given their consent to the variation or who voted in favour of the special resolution for variation and the number of shares held by them;
 - number of shareholders who did not consent to the variation or who voted against the special resolution and the number of shares held by them;
 - date or dates on which consent was given or the date when the special resolution for variation was passed;
 - reasons/grounds for opposing the variation;
 - prayer for cancellation of the variation so consented or passed as the case may be.
- (7) The decision of the Tribunal on any application shall be binding on the shareholders.
- (8) File the copy of the order of Tribunal with the Registrar of companies within thirty days of date of order.

Punishment for not complying with the provisions of section 48

Where any default is made in complying with the provisions of section 48, 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.

Declaration in Respect of Beneficial Interest in any Shares

Rule 9 of Companies (Management and Administration) Rules, 2014 states the following:

- (1) A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares (hereinafter referred to as “the registered owner”), shall file with the company, a declaration to that effect in **Form No. MGT.4**, within a period of thirty days from the date on which his name is entered in the register of members of such company.

Provided that where any change occurs in the beneficial interest in such shares, the registered owner shall, within a period of thirty days from the date of such change, make a declaration of such change to the company in **Form No. MGT.4**.

- (2) Every person holding and exempted from furnishing declaration or acquiring a beneficial interest in shares of a company not registered in his name (hereinafter referred to as “the beneficial owner”) shall file with the company, a declaration disclosing such interest in **Form No. MGT.5**, within thirty days after acquiring such beneficial interest in the shares of the company.

Provided that where any change occurs in the beneficial interest in such shares, the beneficial owner shall, within a period of thirty days from the date of such change, make a declaration of such change to the company in **Form No. MGT.5**.

- (3) Where any declaration under Section 89 is received by the company, the company shall make a note of such declaration in the register of members and shall file, within a period of thirty days from the date of receipt of declaration by it, a return in **Form No. MGT.6** with the Registrar in respect of such declaration with fee. However, a Specified IFSC public and private company shall file **Form No. MGT.6** within a period of sixty days from the date of receipt of declaration.

Provided that nothing contained in this rule shall apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India.

PART II TRANSFER OF SHARES

Introduction

In general parlance, “transfer” takes place when title to the property is transferred from one person to another whereas “transmission” refers to devaluation of title by operation of law. Transmission may take place either by succession or by testamentary transfer.

According to Section 44 of Companies Act, 2013, shares, debentures or other interest of a company are moveable property, transferable in the manner provided by the articles of association of the company. A member can also transfer any “other interest” in the company in the manner provided in the articles. For example, a guarantee company may transfer membership interest, suspension of membership or assignment of interest etc. by making special provisions in the articles.

Transfer of shares

- (1) **INSTRUMENT OF TRANSFER** : Section 56 of the Companies Act, 2013 provides that transfer of securities or interest of a member shall not be registered except on production of instrument of transfer duly stamped, dated and executed and has been delivered to the company by the transferor or the transferee within a period of sixty days (irrespective of the nature of the company, whether listed or unlisted) from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

Proviso to sub-section (1) of section 56 provides that the provisions of this sub – section in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor or an by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company.

This is subject to condition that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond ; and if no such certificate is in existence, along with the letter of allotment of the bond.

The provisions of section 56(1) shall not apply to a Government Company in respect of securities held by nominees of the Government.

- (2) **IN CASE OF LOSS OF TRANSFER DEED**: In case of loss of the instrument, the company may register the transfer in terms of indemnity. It has been provided in section 56(2) of the Act that where, on an application in writing made to the company bearing adequate stamp value for an instrument of transfer, it is proved to the satisfaction of the Board of directors that the transfer deed signed by or on behalf of the transferor and by or on behalf of the transferee has been lost, the company may register the transfer on such terms as to indemnify as the Board may think fit.
- (3) **TRANSFER OF PARTLY PAID UP SHARES**: Section 56(3) of the Act provides that where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered unless a notice in **Form SH-5** is issued to the transferee and transferee gives “No objection” to the transfer within two weeks from the receipt of the notice. The notice to the transferee shall be deemed to have been duly given if it is dispatched by prepaid registered post to the transferee at the address given in the instrument of transfer, and shall be deemed to have been duly delivered at the time at which it would have been delivered in the ordinary course of post.
- (4) **TIME LIMIT REGISTRATION OF TRANSFER FOR UNLISTED PUBLIC COMPANY**: Section 56(4) of the Act provides that every company unless prohibited by any provisions of law or of any order of any court, Tribunal* or other authority, shall deliver the certificates of all securities allotted, transferred or transmitted-
- (i) Within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
 - (ii) Within a period of two months from the date of allotment, in the case of any allotment of any of its shares;
 - (iii) Within a period of one month from the date of receipt by the company of the instrument of transfer or the intimation of transmission, in the case of a transfer or transmission of securities.
 - (iv) Within a period of six months from the date of allotment in the case of any allotment of debenture.

Where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

Further a Specified IFSC public and private company shall deliver the certificates of all its securities to subscribers after incorporation, allotment, transfer or transmission within a period of sixty days.

[In case of a listed company, the listing Regulation requires that the registration of transfers and issuance of certificates will be made within fifteen days from the date of receipt of request of transfer. [Regulation 40(3) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].

- (5) **TRANSFER BY LEGAL REPRESENTATIVE:** According to Section 56(5) of the Act, the transfer of any security or other instrument of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of execution of the instrument of transfer.
- (6) **OFFENCE & PENALTY:** Where a company registers transfer or transmission of security not in accordance with the provisions of section 56 of the Act, 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.
- (7) **VALUATION OF SHARES:** If the shares are listed in stock exchange, the valuation will be determined on the basis of quotations available on the stock exchange on the date of execution of transfer deed or the consideration paid whichever is higher.

On the contrary, if shares are not listed on stock exchange, the value of the shares for the purpose of stamp means the price that the shares would fetch at the time of transfer of shares or consideration agreed, whichever is higher.

It is to be noted that no transfer duty is applicable for transfer of shares if shares are in dematerialized form.

- (8) **STAMP DUTY:** At present, stamp duty applicable for transfer of shares is 25 paise for every one hundred rupees or part thereof of the value of share. Section 56 of the Companies Act requires that where share transfer form is delivered to the company should be adequately stamped. It means stamp of adequate value should be affixed and cancelled on transfer deed. Unless a transfer form is duly stamped when it was delivered to the company for registration of transfer, it could not say that mandatory requirement of section 56 is complied with and the company is justified to refuse the transfer. [*Patel Engineering Co. v B. Y. Invest Pvt. Ltd. Case No. 20/CLB/WR/91*]

- The share transfer stamps so affixed on a share transfer form are required to be cancelled either at the time of affixing them or at the time of execution of the deed by the transferee. The transferee must make sure that before lodgment of the transfer with the company, he must cancel the stamps by crossing them on their face. No such cancellation of stamps is required in case shares are in dematerialized form.
- If adhesive stamp on transfer deed is not defaced, a fresh deed is to be submitted; company is not obliged to cancel stamp. [*Nuddea Tea Co. Ltd. v. Ashok Kumar Saha* (1988) 64 Comp Cas 775 (Cal)]
- Unless a particular mode of cancellation is prescribed in any state, crossing of stamps is sufficient. [Prfull Kumar Rout v Orient Engg. Works (P) Ltd. (1986) 60 Comp Cas 65 (Ori)]
- When the number of share transfer stamps to be affixed on a share transfer form is large it is practically impossible to affix all the stamps on the share transfer form. In such a situation, the share transfer form, with which a separate sheet of paper with share transfer stamps of appropriate value having been affixed is permanently attached, should be treated as duly stamped under the Stamp Act - In re. *Mathrubhumi Printing & Publishing Co. Ltd.* (1991) 5 CLA 64 (Ker.)
- It is not necessary that stamps be affixed before transfer deed is executed, they are to be affixed before delivery. [Prfull Kumar Rout v Orient Engg. Works (P) Ltd. (1986) 60 Comp Cas 65 (Ori)]

- (9) **EXEMPTION FROM PAYMENT OF STAMP DUTY:** No duty shall be chargeable in respect of any instrument executed by or on behalf of or in favor of the Government in cases where but for this exemption, the Government would be liable to pay to pay the duty chargeable in respect of such instrument.
- (10) **NON-APPLICABILITY OF above conditions:** The instrument of transfer and the concerned formalities in section 56 do not apply to the transfer of securities held under the system of depositories. Mere delivery of transfer instruction in the prescribed form to the depository participant by the transferor shall be sufficient.

TRANSFERABILITY OF SHARES IN A PRIVATE COMPANY

- Shares of a private company are not marketable securities due to restriction on right to transfer. Such shares by their very nature are not freely transferable in the market. The objective behind the right of restriction on the transfer of shares is to preserve the composition of the shareholding.
- The section 2(68) of the Companies Act 2013 restricts the right to transfer shares but does not prohibit the right to transfer shares. In case of transfer of shares of a private company, the provisions or restrictions contained in the Articles of Association should be duly complied with by the transferor and transferee.
- As per the provisions of section 44 of the companies Act, 2013, shares or debentures or other interest are movable property, transferable in the manner provided by the Articles of the company. Therefore, there cannot be an absolute prohibition on the right to transfer shares. The right to transfer may be subjected to restrictions contained in the articles and there cannot be total prohibition or ban on transferability of shares. However, only permissible restriction on transferability may be contained in the Articles of association. Restrictions upon transfer of shares in private companies are not applicable in following cases:-
 - (a) On the right of a member to transfer his/ her shares in a case where the shares are to be transferred to his/her representative(s).
 - (b) In the event of death of a shareholder, legal representatives may require the registration of shares in the names of heirs, on whom the shares have been devolved.
 - (c) In respect of shares which are proposed to be issued on a right basis, existing members would have a right to renounce shares likely to be allotted to them. If the existing shareholders renounce their shares then these shares will be allotted to the renouces for the first time and therefore no transfer of shares will take place.
- Restriction on right to transfer shares is generally placed by using following two methods:
 - (a) **Right of pre-emption:** If a member wishes to sell some or all of his shares, such shares shall first be offered to other existing members of the company at a price determined by the directors or by the auditor of the company or by the use of formula set out in the articles. If no existing member is determined to acquire shares, then shares can be transferred by the transferor to the proposed transferee. A member is not bound to sell his shares to other members under pre-emption clause unless any other member or members agree to buy all the shares proposed to be sold. The transfer between the members is outside the purview of pre-emption clause. The pre-emption clause cannot place a complete ban on right to transfer; they cannot completely prohibit the transfer.

Valuation of Shares under Pre-emption clause: Articles of Association of private company provide that the shares are to be sold under pre-emption clause at a fair price determined by the directors or the auditor of the company. It may also be provided that the fair price would be certified by the auditor of the company. If the pre-emption clause requires that the shares are required to be offered to other members at a price certified by the directors or auditor(s), the court are not in a position to enquire in to the correctness of valuation, unless there is evidence that valuation was not correctly

made. If the person who made the valuation has acted negligently and failed to take into account all the necessary factors for arriving at the value of share, in such case the transferor may sue for damages to the person who made the valuation for difference between the value of the share, as computed by the valuer, and the real value of shares

- (b) **Powers of directors to refuse registration of transfer of shares:** The Powers of directors to refuse registration of transfer of shares are specified in the articles of association of the company. This power is to be exercised by the Board of directors in good faith.

TRANSFERABILITY OF SHARES IN A PUBLIC COMPANY

The securities of a public company are freely transferable, subject to the provisions that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as contract.

PROCEDURE OF TRANSFER OF SHARES IN A PRIVATE COMPANY

Generally articles contain the detailed provisions as regards the procedure for transfer of shares. Following are the steps to be followed while transfer of shares.

- (a) Transferor should give a notice in writing for his intention to transfer his share to the company.
- (b) The company in turn should notify to other members as regards the availability of shares and the price at which such shares would be available to them.
- (c) Such price is generally determined by the directors or the auditors of the company.
- (d) The company should also intimate to the members, the time limit within which they should communicate their option to purchase share on transfer.
- (e) If none of the members comes forward to purchase shares then the shares can be transferred to an outsider and the company will have no option, other than to accept the transfer.
- (f) It is to be noted that any transfer of shares to an outsider without complying with the procedure as specified in the articles for effecting transfer of shares will not be operative against the company. Even in the case where the procedure prescribed by the Articles was not followed and such failure was not due to any fault on the part of selling shareholder, the transfer to an outsider was held not to be effective.
- (g) Transfer of shares without consent of holder of shares and without prior sanction of Board of Directors as required under articles of association of a private company concerned could not be held to be valid. [John Tinson Co. (P) Ltd. V. Surjeet Malhan (1997) 88 Comp Cas 750 (SC)]

Provisions for transfer of shares as per the Companies Act, 2013

1. An instrument of transfer of securities held in physical form shall be in **Form No. SH-4 (Securities Transfer deed/form)** and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company **within sixty days** from the date of such execution and where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.
2. In the case of a company having no share capital, provisions of transfer of shares/securities shall apply as if the references therein to securities were references to the interest of the members in the company.
3. Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered,. Unless the company gives the notice of the application in **Form SH-5**, to the transferee and the transferee gives no objection to the transfer within **two weeks** from the receipt of the notice.

4. Company shall unless prohibited by any provision of law or any order of court, Tribunal or other authority, deliver the certificates within a period of one month from the date of receipt by the company of the instrument of transfer of securities.
5. On the event of death of the security holder, if the nomination has been received by the company in Form **SH-13**, the share will be transmitted in the name of the nominees.

Procedure for transfer of shares as per the Companies Act, 2013
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- (i) Obtain the transfer deed in the prescribed form i.e. **Form SH-4**, endorsed by the prescribed authority.
- (ii) The instrument of transfer may not be in the prescribed form in the following cases:-
 - Shares transferred by a director or nominee on behalf of another body corporate under section 187 of the companies Act, 2013;
 - Shares transferred by a director or nominee on behalf of a corporation owned or controlled by the central or state Government;
 - Shares transferred by way of deposit as a security as a security for repayment of any loan or advance if they are made with any of the following:-
 - (a) State Bank of India; or
 - (b) Any scheduled bank; or
 - (c) Any other banking company; or
 - (d) Financial Institution; or
 - (e) Central Government; or
 - (f) State Government; or
 - (g) Any corporation owned or controlled by the Central or State Government; or
 - (h) Trustees who have filed the declarations.
- (iii) For transferring debentures, the instrument of transfer need not be in prescribed form but standard format can be used, being convenient to do so.
- (iv) Get the transfer deed duly executed either by the transferor and the transferee or on their behalf in accordance with section 56 of the Companies Act, 2013 and the Articles of Association, in case of shares, and also in accordance with trust deed in the case of debentures.

Requirement of execution of the transfer form by each of the joint shareholders cannot be met by execution of the transfer form by one of the shareholders even though between the shareholders inter se there is an agreement that one shareholder can sign on behalf of all other shareholders [*Claude-Lila Parulekar v. Sakal Papers (P) Ltd.* (2005) 124 Comp Cas 685 (SC): (2005) 59 SCL 414 (SC)]
- (v) The transfer deed should bear stamps according to Indian Stamp Act and stamp duty notification in force in the state concerned. The present rate of transfer of shares is 25 paise for every one hundred rupees of the value of share or part thereof.
- (vi) See that stamp affixed on the transfer deed is cancelled at the time or before signing of the transfer deed.
- (vii) The signatures of the transferor and the transferee in the share/debentures transfer deed must be witnessed by a person giving his signature, name and address.
- (viii) Attach the relevant share or debenture certificate or allotment letter with the transfer deed and deliver
 the same to the company.

- (ix) Where the application is made by the transferor and relates to partly paid shares, the company has to give due notice of the amount due on shares/debentures to the transferee and the transferee shall raise objections, if any within two weeks from the date of receipt of the said notice.
- (x) If signed transfer deed has been lost, affix the same stamp on a written application. In such case, the Board may, if it thinks fit to do so, register the transfer on such terms of indemnity as it thinks fit.
- (xi) If the shares of the company are listed in a recognized stock exchange, then the company cannot charge any fee for registration of transfers of shares and debentures.

CHECKLIST FOR COMPANY SECRETARY

A company secretary is required to put up before the Board or the Share Transfer Committee of the company for consideration and approval, only those cases of registration of share transfers, which have been checked up by him and have been found to be strictly in accordance with the provisions of section 56 and other applicable provisions of the Companies Act, 2013 and the articles of association of the company. If the Instrument received is deficient in any respect, the same should be returned to the person who had lodged the same with the company for making good the deficiency. The following checklist has been designed to help a company secretary in his work of processing of cases of share transfers:

- (1) Each column of transfer deed (SH-4) is properly and adequately filled in.
- (2) Date of execution is to be filled up properly.
- (3) Name of the company and its Corporate Identification Number (CIN) is correctly given.
- (4) Names of the recognized stock exchange, where dealt in, if any, have been given in the Instrument.
- (5) Description of shares, viz., equity, preference etc. is correctly given. Kind or class of securities, nominal value of each unit, amount called up and amount paid up, number of securities being transferred (both in figures and words) and consideration received (both in figures and words) are to be mentioned clearly.
- (6) Distinctive numbers of the shares mentioned in the share certificate(s) are to be mentioned in the deed.
- (7) Corresponding share certificate numbers are to be entered in the transfer deed.
- (8) Folio number of the transferor as given in the enclosed share certificate(s) is to be correctly entered in the transfer deed.
- (9) Name and address of the witness to the signature(s) of the transferor(s) are legibly written in the transfer deed and the witness has signed the transfer deed.
- (10) Signature(s) of the transferor(s) must tally with the specimen signature available with the company.
- (11) In case of joint share holdings, form shall be signed by all joint transferors.
- (12) Particulars of transferee viz. Name, Father's name, address, E-mail Id, occupation and existing folio number are to be correctly entered in the transfer deed.
- (13) The transferee(s) or the buyer(s) has/have signed the Instrument.
- (14) Relevant certificate(s) of shares or debentures or other securities is/are to be enclosed.
- (15) If certificate was not issued, letter of allotment is to be enclosed.
- (16) Share Transfer Stamps of appropriate value have been affixed on the Instrument and they have been properly cancelled by a rubber stamp or defaced otherwise. If the shares are listed, the valuation of the Share Transfer Stamps is to be determined based on their quoted value. At present the stamp duty on

transfer of shares is at the rate of twenty five paise for every hundred rupees of value of the shares on the date of sale, or part thereof.

- (17) Where the transfer is proposed to be in the name of the minor(s), whether the articles of association of the company permit such registration of transfer and the shares are fully paid.
- (18) Whether the transferor(s) and/or transferee(s) is/are non-resident Indians and if so, whether the transfer is permitted under the Foreign Exchange Management Act, 1999, and if not, whether specific permission of the Reserve Bank of India has been obtained.
- (19) Where the transferor is a body corporate, whether board resolution of the transferor is passed to this effect and proper authority has been given by the Board of directors to the person signing as the transferor on behalf of the company.
- (20) In case of listed company, comply with the formalities of listing Regulations and SEBI Guidelines.
- (21) Check whether the shares under registration are subject to a lien of the company and if so, whether the company has lifted the lien.
- (22) The transfer of shares must not contravene the provisions of SEBI (Substantial Acquisition of Share and Takeovers) Regulations, 2011.

REFUSAL AND APPEAL AGAINST REFUSAL TO TRANSFER OF SHARES IN A PRIVATE COMPANY

According to Section 58(1) of the Act, If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of **thirty days** from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal. While refusing to register transfer of shares, it is necessary that the directors must act in a good faith and for the benefit of a company and shareholders and not for some other purpose. Power of refusal to register transfer of shares should be exercised strictly on the grounds specified in the Articles and not on the basis of any other grounds.

According to Section 58(3) of the Act, the right to appeal in the case of refusal of has now been restricted to only transferee. The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

REFUSAL AND APPEAL AGAINST REFUSAL TO TRANSFER OF SHARES IN A PUBLIC COMPANY

According to Section 58(2) of the Act, the securities or other interest of any member in a public company shall be freely transferable, provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

According to Section 58(4) of the Act, if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

POWER OF TRIBUNAL [SECTION 58(5)]

The tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal or by order-

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

OFFENCE AND PENALTY [SECTION 58(6)]

If a person contravenes the order of the Tribunal, he shall be punishable with imprisonment for a term which shall not be less than 1 year but which may extend to 3 years and with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

RECTIFICATION OF REGISTER OF MEMBERS

According to section 59(1) of the Companies Act, 2013, –

- If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or
- if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or
- any member of the company, or the company may appeal in such form as may be prescribed,

to the Tribunal*, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of register. The person aggrieved would be the person who was personally and directly affected by an offence and not any member of the public or even a person who was charged with the duty of enforcing prohibitory regulations under a statute.

Who can apply for rectification: Any of the following persons may apply to the Tribunal for rectification in the register of members:-

- (a) aggrieved person;
- (b) any member of the company;
- (c) the company;
- (d) depository;
- (e) participant; or
- (f) SEBI.

A petition under section 59(1) cannot be maintained by promoters as they do not fall under any of the above mentioned six categories.

Order of Tribunal: The Tribunal may, after hearing the parties to the appeal by order, either

- Dismiss the appeal, or
- Direct that the transfer or transmission shall be registered by the company within a period of ten days of receipt of the order, or

- Direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

No restriction on transfer of securities: Unless the voting right have been suspended by an order of the Tribunal it shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights.

Where transfer of securities is in contravention of the SCRA and SEBI Act:

- According to section 59(4) of the Act, where the transfer of securities is in contravention of any of the provisions of the Securities Contract (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or Companies Act, 2013 or any other law for the time being in force, the Tribunal may on an application made by the depository company, depository participant, the holder of securities or the Securities and Exchange Board of India, direct any company or a depository to set right the contravention and rectify its register or records concerned.
- The NCLT, after hearing the parties, can either dismiss the appeal or direct registration of transfer or transmission within ten days of receipt of order or direct rectification of records of depository or the register or direct the company to pay damages suffered by aggrieved party. If NCLT accepts the appeal, it can direct company to pay damages, if any, sustained by the aggrieved party.
- NCLT can order payment of damages to aggrieved party. Even specific performance for transfer of such shares can be ordered under section 10 of Specific Relief Act. NCLT has the authority to exercise its power even if the applicants have filed civil suit in other courts. The applicant cannot be debarred from filing an application for rectification of register simply because he has also filed a suit. NCLT can consider question relating to title of shares. However, it cannot divide and allot shares among joint holders.

No time period has been specified for making an application to the Tribunal by the depository, company, etc.: There is no time limit for filing application for rectification. There is no question of any non-intimation or non-refusal and hence there is no time limit for application for rectification of register. In *Remanika Silks P Ltd. v. J C Augustine* (1999) 19 SCL 71 (CLB), it was held that CLB (now it is NCLT) is not 'court' and Limitation Act is not applicable. There is no time limit prescribed for filing application for rectification of register. In *A Devarajan v. N S N Consultancy P Ltd.* (2005) 58 SCL 203 (CLB), it was held that there is no time limit for filing application for rectification of register of members. Filing application within three years from date of knowledge of transfer is not barred by limitation prescribed under section 137 of Limitation Act.

Offence & Penalty: If any default is made in complying with the order of the Tribunal, 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 one lakh rupees but which may extend to three lakh rupees, or with both. In *S Bhuvanewari v. ACI (Agro Chemical Industries) Ltd.* (2004) 51 SCL 158 = 4 CTC 690 (Mad HC DB), it was held that CLB (now NCLT) cannot direct a member to transfer his shares. It can only direct company to register the transfer or transmission, direct rectification of registers and pay the damages, if any, sustained by aggrieved party.

CERTIFICATION OF TRANSFER

- When a shareholder sells only a part of the shares (and not all of them) mentioned in the share certificate, the transfer instrument, after being signed by the transferor, is not sent to the transferee, nor is the transferor's share certificate handed over to the transferee.
- Both these documents are lodged by the transferor at the company's registered office.

- The company retains the share certificate but issues to the transferor a balance ticket in respect of the shares which he is retaining, and an officer of the company, usually the secretary, certifies the transfer by endorsing on the transfer instrument a signed statement “certificate lodged” or words to that effect and mentions the number of shares which it is lodged. This is called “Certification of transfer” and, taken by the buyer of the shares as tantamount for delivery to himself of the share certificate; and he can make a good title to the share in the “certified transfer”.
- When this “certified transfer instrument” is handed over to the transferee of shares, he signs it and forwards it to the company’s registered office with a request for registration.
- When the transfer has been registered, the company cancels the old share certificate and issues two new certificates; one to the transferee in respect of the shares transferred and the other to the transferor, in exchange for the balance ticket in respect of the shares retained by him.
- Certification is also necessary when a shareholder disposes of the whole of his holding to two or more transferees. In such a case, each transfer instrument is certified but no “balance ticket” is issued because the transferor has not retained any shares for himself.
- The “Certification” used to be in effect a representation by the company to any person acting on the faith of certification that the company has received such documents as show a prima facie title of the transferor but not that transferor has any title to the shares.

AVOIDING FORGED TRANSFERS

One of the most delicate and important jobs in the process of registration of transfer of shares is matching the signature(s) of transferor(s) on the instruments of transfers that are lodged with companies.

It is quite common that during transit by post, envelopes containing share transfer deeds and shares certificates are pilfered or are removed, the original instruments of share transfer are retained, signature(s) of transferor(s) on a new instrument of transfer are forged and the shares are sold to unsuspecting persons along with the corresponding share certificates. The purchasers fill in their own names in the instruments of share transfers, as transferees of the shares and lodge the forged instruments with the company for registration of transfer of the shares in their names.

Where, a company acts in good faith and registers a transfer produced by the transferee and issues fresh certificate to him but later found that the transfer was forged and the company is compelled to restore the shares, the transferee is liable to indemnify the company against its liability. The company may not however be able to claim a complete indemnity if it is guilty of negligence in failing to spot the forgery.

Therefore, the company secretaries and/or those who are entrusted with the responsibility of matching signatures of the transferor(s) on the share transfer forms with those that are available in the records of companies, have to be very careful in checking the signature(s) of transferor(s) on the share transfer deeds. Even on the slightest doubt they should not entertain the documents and immediately send a notice to the transferor(s) notifying the fact of receipt of the transfer documents with the name(s) and other given details of the transferee(s) and requesting them to intimate to the company within a stipulated period of time whether the shares have in fact been sold to the said transferee(s) and also clearly saying that if the company does not hear to the contrary from the transferor(s) within the stipulated period of time, the transfer of shares would be registered in the names of the said transferees.

A copy of such a notice should also be endorsed to the regional stock exchange, where the securities of the company are listed, for its information and record.

A forged transfer is a nullity. Therefore, the registered holder of the shares [i.e. the transferor(s)] continues to be

the owner and holder of the said shares and if the company has already acted on the forged transfer and has registered the share transfer in the name of the person who has lodged the forged instrument, the company is bound to restore the name of the original shareholder on the register of members [*People's Ins. Co. v. Wood and Co.*; 1961 (31) Com Cases 61].

TRANSPOSITION OF NAMES

In the case of joint-shareholders, one or more of them may require the company to alter or rearrange the serial order of their names in the register of members of the company. In this process, there will be need for effecting consequential changes in the share certificates issued to them. If the company provides in its articles that the senior-most among the joint-holders will be recognized for all purposes like service of notice, a copy of balance sheet, profit and loss account, voting at a meeting etc., the request of transposition may be duly considered and approved by the Board or other authorized officer of the company. Since no transfer of any interest in the shares takes place on such transposition, the question of insisting on filling transfer deed with the company, may not arise. Transposition does not also require stamp duty.

The Stock Exchange Division of the Department of Economic Affairs has clarified that there is no need of execution of transfer deed for transposition of names if the request for change in the order of names was made in writing, by all the joint-holders. If transposition is required in respect of a part of the holding, execution of transfer deed will be required.

DEATH OF TRANSFEROR OR TRANSFEREE BEFORE REGISTRATION OF TRANSFER

In accordance with section 56 of the Companies Act, 2013, a company shall register the transfer of shares when a proper instrument of transfer duly stamped and executed by or on behalf of the transferor, and transferee has been delivered to the company along with the share certificates.

If transferor sold his shares by executing a transfer deed in favor of transferee and such documents were lodged for transfer but the transferor dies before such transfer is registered by the Company, the company would register the transfer, irrespective of whether the death of transferor is intimated to company before registration of transfer or whether death is intimated after registration of transfer.

If transferee dies before registration, and company has notice of his death, transfer of shares cannot be registered in the name of the transferee who has already deceased. With the consent of the transferor and the legal representatives of the transferee, the transfer may be registered in the name of the legal heirs of the transferee (who has already died) or his nominee, if any. But if there is a dispute, an order of the Court will be insisted by the company before effecting the transfer.

In case, the death of transferee is not notified to the company, the company can register the transfer in the name of the deceased transferee, in as much as the company is not aware of the death of the transferee and the transfer is done *bonafide* by the company, as per the information available with it.

In *Killick Nixon Ltd. v. Dhanraj Mills Ltd.* (1983) 54 Com Cases 432, it was held that the company is not bound to enquire into the capability of the transferee to enter into a contract. The company has to act on the basis of what is presented in the transfer deed.

PART III TRANSMISSION AND NOMINATION OF SHARES

TRANSMISSION OF SHARES

Transmission of shares is a process by operation of law, where under the shares registered in a company in the name of a deceased person or an insolvent person are registered in the name of his legal heirs by the company on proof of death or insolvency and on the establishment of right and title of the heirs on the deceased member's shares. Transmission of shares takes place when a registered member dies or is adjudicated insolvent or lunatic by a competent Court.

A transmission of shares or other interest in a company of a deceased member thereof made by the legal representative of a deceased member of the company shall be considered as transmission of shares by operation of law and will be registered by a company in the register of members.

Articles of companies generally provide for formalities to be observed for transmission of shares. In the absence of such provision in the articles of the company, Regulations 23 to 27 of Table F of Schedule I to the Act will govern the procedure for transmission. According to these regulations, the legal representatives are entitled to the shares held by deceased member and the company must accept the evidence of succession e.g., a succession certificate or letter of administrations or probate or any other evidence properly required by the Board of directors. He is, however, not a member of the company by reason only of being the legal owner of the shares. But he may apply to be registered as a member. On the contrary, instead of being registered himself as a member, he may make such transfer of the shares as the deceased or insolvent member could have made. The Board of directors also has the same right to decline registration as they would have had in the case of transfer of shares before death. But if the company unduly refuses to accept a transmission, the same remedies are available to the legal representative as in the case of a transfer namely, an appeal to the Tribunal under Section 58.

- (a) **Execution of transfer deed not required in case of transmission of shares:** Section 56 (2) of the Companies Act, 2013 states that nothing in section 56 shall prejudice any power of the company to register as holder of securities any person to whom the right to securities of the company has been transmitted by operation of law. It is not necessary to have any instrument of transfer executed for the purpose of transmission of shares. Where title to the shares comes to vest in another person by operation of law, it is not necessary to submit transfer form. [Life Insurance Corpn. Of India v Bokaro & Ramgur Ltd. (1966) 36 Comp Cas 490 (Del)]
- (b) **Transmission shall be subject to the liabilities, if any:** In the case of a transmission of shares, shares continue to be subject to the original liabilities, and if there was any lien on the shares for any sums due, the lien would subsists, notwithstanding the devaluation of shares.
- (c) **Requirement of documents/evidences for transmission of shares:** Where title to shares comes to vest in another person by operation of law, it is not necessary to execute and submit transfer deed. A simple application to the company by a legal representative along with the following necessary evidences is sufficient:-
 - Certified copy of death certificate;
 - Succession Certificate;
 - Probate;
 - Specimen Signature of the successor.

However, requirement of these certificates is not essential and depends on various circumstances

of the case. Where a succession certificate has been granted in respect of shares, the company cannot insist on the production of probate or letters of administration; the certificate affords full indemnity to company.[Thenappa Chettiar v Indian Overseas Bank Ltd. (1943) 13 Comp Cas 202 (Mad)]

- (d) **No requirement of consideration and payment of stamp duty:** Since the transmission is by operation of law, neither consideration for transfer nor stamp duty is required on instruments for transmission.
- (e) **Transmission in case of joint holding:** Regulation 23 in Table F provides that on the death of a member where he was a joint holder, the survivor or survivors shall be the only persons recognized by the company as having any title to his interest in the shares. The legal heir of the deceased member is not entitled to get registered as a joint holder along with the surviving holder.
- (f) **Modes of transmission of shares:**
- (i) The survivors in case of joint holding can get the shares transmitted in their names by production of the death certificate of the deceased holder of shares. The company records the particulars of the death certificate and a reference number of recording entry is given to the shareholder so as to enable him to quote such number in all future correspondence with the company.
 - (ii) If a member of a company dies and leaves after him a will or letter of administration then the survivors shall get a copy of "will" certified under the seal of a Court competent jurisdiction. The certified copy of the will is called a "probate" and it shall be forwarded to the company.
 - (iii) If a member of a company dies without leaving a will, then succession certificate issued by a Court of competent jurisdiction shall be submitted to the company.
 - (iv) in case a member of a company becomes bankrupt, the official receiver shall produce documentary evidence of his appointment from a competent Court.
- (g) **Transmission could be effected without succession certificate in case of small holdings:** In the case of small holdings, transmission of securities may be considered and effected by a company without obtaining succession certificate. However, the Board of directors should ensure that sufficient evidence has been produced by the legal heirs. The following documents are required to be submitted to the company;-
- Certified copy of the death certificate.
 - Particulars and signature of all legal heirs.
 - Affidavit on non-judicial stamp paper certified by a first class magistrate or notary public.
 - Deed of disclaimer.
 - Indemnity bond on non-judicial stamp paper
 - PAN of the legal heir.

It would be in order for the Board to register transmission of shares by obtaining indemnity bond rather than insisting upon production of succession certificate.

- (h) **Right to dividend, right shares and bonus shares to legal representative shall be kept in abeyance:** As per Regulation 24 in Table F, a person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the shares. When a succession certificate is granted by a

Court, it shall specify the debts and securities set forth in the application for the certificate and may empower the applicant to receive interest or dividend on the securities etc.

- (i) **Voting rights:** The legal representatives of a deceased member shall not be entitled to exercise voting and other rights in general meetings of the company unless he is registered as a member in respect of the shares.
- (j) **Requirement of probate:** Section 213(1) of Indian Succession Act, 1925 provides that no right as an executor or legatee be established in any court, unless a court is competent jurisdiction in India has granted probate of the will under which the right is claimed. It is not necessary to have the will registered for the purpose. This section requires production of probate only in two cases; (i) when a person wants to establish a right as an executor, and (ii) when he wants to establish his right as a legatee.
- (k) **Transmission in case of amalgamation:** The transfer of shares in amalgamation would not require execution of instrument of transfer or any other formalities under section 56 of the Act. This is a case of transmission of shares by operation of law, in as much as, by virtue of an order of the High Court under section 232 of the companies Act on sanctioning a scheme of amalgamation, all assets and liabilities of the transferor company vest, by operation of law, in the transferee company.

REFUSAL TO REGISTER TRANSMISSION OF SHARES

- A private company may refuse to register transmission of shares in pursuance of any power conferred on it by the Articles or otherwise, provided intimation shall be sent to this effect by the company.
- The company, shall, within two months from the date on which an application of transmission was delivered, to the company, send notice of the refusal to the person giving intimation of such transmission, giving reasons for such refusal under section 58 of the Companies Act, 2013.
- A private company can decline to register to register transfer or transmission of shares only on those grounds, which are contained in the Articles.
- Provisions of section 58 of the Companies Act, 2013 would no longer apply to the cases of refusal to register transfer/transmission of shares, debentures of both listed and unlisted public companies.
- Now the only remedy to aggrieved person is as provided under section 59 of the Companies Act, 2013, which is rectification of registration only on grounds specified in sub section (1) of section 59.
- As per section 59 (4), The Tribunal may, after such inquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of securities is in contravention of any of the provisions of the SEBI Act, 1992 or regulations made thereunder. Thus, it has abrogated the right to refuse registration of transfer of shares in all public companies on any ground. It would be obligatory for them to register such transfer but after having registered such transfer, the company may approach the Tribunal for an order of rectification so that it can delete the transferor's name from its register subsequently.

OTHER PROVISIONS RELATED REFUSAL TO REGISTER TRANSMISSION OF SHARES

- (1) **Registration of transmission of shares:** In the case of transmission there is an instantaneous transfer of ownership of shares to the heirs of last holder from the moment of his death except that it may be necessary for the heir to produce a succession certificate. The succession certificate produced by the petitioner is conclusive evidence; it is statutory duty of a company to register transfer/transmission once there is a legal compliance.
- (2) **Petition for transmission not considered by the Tribunal:** In *Anil Chhabria v Finolex Industries Ltd.* (2000) 99 Comp Cas 168 (CLB): (1999)35 CLA 213(CLB), it was held that there was nothing on record

to show that the Board of directors considered the delivery of intimation of transmission after the succession certificate has been lodged. Indeed there is no indication that the Board of directors had ever considered the matter; all the time it was company secretary who had been writing to the petitioner. In the instant case the chairman is related to the petitioners. There is an allegation that he was delaying the transmission. The delay in transmission in the circumstances is not bona fide.

- (3) **Whether intermediary in transaction of transfer of shares has a right to file appeal:** A stranger to section 58(1) by no means can be called “any person aggrieved”. The word ‘aggrieved’ refers to a person having a substantial grievance, a person who has been denied some personal or property right. The mere fact that the transferor to transferee had not chosen to prefer an appeal before the Board; it would be no ground to permit the appellant to prefer an appeal on the alleged ground that he had suffered monetary loss. [Vinod K. Patel v Industrial Finance Corporation of India(2001) 103 Comp Cas 557 (Del): (1999) 35 CLA 376 (Del)]
- (4) **Company cannot withhold transmission on account that the court fee paid was insufficient:** So far as the court fee is concerned, it is for the Court to satisfy about its correct payment and if it is found that it was insufficiently paid, the court can direct its recovery together with penalty, if any leviable. At any rate it is not for the company to withhold transmission of shares on this count. Once the succession certificate has been produced, the company ought to have effected transmission of shares on the basis of that certificate. [Arjun Kumar Israni v Cipla Ltd. (2000) 99 Comp Cas 237 (CLB)].
- (5) **Time limit for filing an appeal with the Tribunal:** An appeal under section 58(3) of Companies Act, 2013 shall be made within thirty days of the receipt of the notice of such refusal or where no notice has been sent by the company within sixty days from the date on which intimation of transmission was delivered to the company.

Procedure for Transmission of Shares

In the light of the foregoing provisions in the Act and the model articles of association of a company as enshrined in Table A of Schedule I to the Companies Act, 2013, a company which receives an intimation about the demise or insolvency of a registered shareholder, is required to follow the procedure as detailed below for effecting registration of transmission of the shares at that point of time registered in the name of the deceased member:

1. On receipt of the intimation about the death or lunacy or insolvency of a member, the company should write to the person who intimated the company about the death or lunacy or insolvency of the member, to enquire whether the deceased member had left a Will or there has been a proper order by a competent Court of law in the event of the member’s insolvency or lunacy, and whether the heirs of the deceased member had applied to a Court and obtained or would be applying to Court of law for the issue of a succession certificate.
2. In the event of insolvency of a member, his shares vest in the Official Receiver, who may get himself registered as holder of the shares or dispose them of. He is also entitled to disclaim partly-paid shares or fully paid shares which are subject to charge, hypothecation or any other encumbrance.
3. If shares are jointly held and one of the joint holders passes away, the company may transmit the shares in the name of the surviving holder. If there are more than one surviving holders, the company must insist on all of them jointly signing the application for such transmission. However, the course of action to be adopted by the company should be decided according to the provisions contained in its articles of association.
4. It is important to note that in the case of transmission of shares in a company –

- (i) no formal instrument of transfer is required since the registered shareholder either does not exist to execute the share transfer form as transferor or for reasons of his incapacity to execute the instrument because of his lunacy or insolvency;
 - (ii) no share transfer stamps are required to be affixed on the application for transmission of shares because transmission is not transfer. Transfer is the result of free will of both the parties, whereas in the event of transmission of shares, only the transferee is present and the State or the law acts as the transferor of the shares, which is known as transfer by operation of law.
5. The company must thoroughly check the application for transmission of shares with specific attention to the following:
- (a) Whether the application for transmission contains correct details of the deceased member, e.g., his name, address, occupation, father's/ husband's name, his shareholding and is accompanied by the relevant share certificates.
 - (b) Whether the applicant has sent along with the application –
 - (i) death certificate, along with a certified true copy, of the deceased member;
 - (ii) succession certificate, if the deceased member has left no Will;
 - (iii) if the deceased member has left a Will, probate thereof or letter of administration;
 - (iv) affidavit by the legal heir declaring his right in the shares; and
 - (v) indemnity bond binding him and his heirs, assigns etc. to indemnify the company in the event of the company having to face any proceedings, incur some loss etc.
6. If the application is accompanied by a succession certificate, the company should ensure that the particulars of heir(s) have(s) been correctly given in the certificate and the certificate contains details of the shares to which the applicant has staked his claim.
7. The company must receive attested signature(s) of the applicant heir(s) duly certified by a competent person, e.g., a Magistrate, a Judge of a High Court, a Gazetted Officer, a Notary Public, an Oath Commissioner, a Bank Manager, or a member of a recognised stock exchange, for its record.
8. If the succession certificate entitles more than one heir to the properties of the deceased member including the shares in the company, the company must register the shares in the joint names of all the heirs. However, if they want the shares to be registered in the name of one of them, then the company must obtain from the remaining heirs a letter of disclaimer on a non-judicial stamp paper of the value applicable in the State where the disclaimer is signed and executed, disclaiming their rights in the shares and entitling the said heir to have the shares transmitted and the transmission registered in his name. Alternatively, the shares must first be registered in the joint names of all the heirs and thereafter the disclaiming heirs may transfer their respective share in the shares under reference by means of a regular share transfer.
9. After having ensured the above, the company secretary should place the application for transmission of the shares along with the relevant documents received therewith, before the Board of directors of the company or the Share Transfer/Transmission Committee, if there is one, for its consideration and approval.
10. As soon as the transmission is approved by means of a resolution of the Board or the Committee, the secretary should enter the name(s) of the authorized heir(s) in the register of members of the company and send the share certificates to the registered members, after appropriately endorsing them in their names.

SUMMARY OF PROVISIONS RELATING TO TRANSMISSION OF SHARES

- (i) Transmission is devaluation of title by operation of law.
- (ii) No instrument of transfer (Transfer Deed) is necessary
- (iii) If there was any lien on the shares or any original liabilities, it would subsist even after transmission.
- (iv) A simple application with certain documents such as death certificate, succession certificate, probate etc, depending upon various circumstances may be sufficient for transmission.
- (v) In case of joint holding, the survivor or survivors shall only be entitled for registration and the legal heir of the deceased member shall have no right or claims.
- (vi) Succession certificate is not required when probate or letter of administration is issued.
- (vii) Once succession certificate is granted, it provides full indemnity to the company to transmit the shares by operation of law.
- (viii) In case of amalgamation, no instrument of transfer is required to be executed.
- (ix) In case of shares of a private company, if company refuses to register transmission, notice of such intention within two months giving reasons must be sent by the company to the person sending intimation.
- (x) Remedies provided under section 58 are no longer applicable on listed/unlisted public company.
- (xi) Section 59 abrogates the right of the public company to refuse registration of transfer/ transmission of shares and debentures on any grounds.
- (xii) The companies, after registration of transfer, may approach the Tribunal for an order of rectification in case the transfer is in contravention of any of the provisions of the Companies Act, 2013 and any other Act.

Nomination of shares under the Companies Act 2013

According to section 72(1) every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.

- Where the securities of a company are held by more than one person jointly, the joint holders may together nominate any person to whom all the rights in the securities shall vest in the event of death of all the joint holders. The nomination may be changed any time by the holder or joint holders of the securities.
- The nominee shall on the death of the holder of securities or as the case may be, on the death of joint holders, become entitled to all the rights in the securities, of the holder, or as the case may be, of all joint holders, in relation to such securities, to the exclusion of other persons.
- Where the nominee is a minor, it shall be lawful for the holder(s) of the shares or holder(s) of debentures to make the nomination to appoint in the presented manner, any person to become entitled to shares in or debentures of the Company in the event of his/their death, during the minority.

Procedure for Nomination by securities holders

The procedure for nomination by security holders is given under Rule 19 of Companies (Share Capital and Debentures) Rules, 2014.

- (1) Any holder of securities of a company may, at any time, nominate, in **Form No. SH.13**, any person as his nominee in whom the securities shall vest in the event of his death.
- (2) On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevant register of securities holders, maintained under section 88.
- (3) Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in Form No.SH.13 any person as nominee.
- (4) The request for nomination should be recorded by the Company within a period of two months from the date of receipt of the duly filled and signed nomination form.
- (5) In the event of death of the holder of securities or where the securities are held by more than one person jointly, in the event of death of all the joint holders, the person nominated as the nominee may upon the production of such evidence as may be required by the Board, elect, either-
 - to register himself as holder of the securities ; or
 - to transfer the securities, as the deceased holder could have done.
- (6) If the person being a nominee, so becoming entitled, elects to be registered as holder of the securities himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased share or debenture holder(s).
- (7) All the limitations, restrictions and provisions of the Act relating to the right to transfer and the registration of transfers of securities shall be applicable to any such notice or transfer as aforesaid as if the death of the share or debenture holder had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.
- (8) A person, being a nominee, becoming entitled to any securities by reason of the death of the holder shall be entitled to the same dividends or interests and other advantages to which he would have been entitled to if he were the registered holder of the securities except that he shall not, before being registered as a holder in respect of such securities, be entitled in respect of these securities to exercise any right conferred by the membership in relation to meetings of the company:
- (9) Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.
- (10) A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in **Form No. SH.14**.
- (11) The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.
- (12) Where the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in **Form No. SH. 13** specified under sub-rule (1), who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

Transmission of Shares to Nominee

Any person, who has been nominated, shall have to produce such evidence as may be required by the Board of the Company, may elect either –

- (a) to be registered himself/herself as holder of the shares or debentures, or
- (b) to make such transfer of the shares or debentures as the deceased shareholder or debenture holder could have made.

If the nominee elects to be registered as holder of the share or debenture himself/herself, he shall deliver or send to the company a notice in writing signed by him/her stating that he/she so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder.

Such nominee shall be entitled to the same dividends and other advantages to which he/she would be entitled if he/she was the registered shareholder or debenture holder. The Board of the company may also give notice to the nominee to elect either to be registered himself/herself or to transfer the share or debenture and if the notice is not complied with within 90 days, the Board may thereafter withhold payment of all dividends, bonuses or other money payable in respect of the share or debenture until the requirements of the notice have been complied with.

Procedure for Transmission of Shares to Nominee

- (1) The Company Secretary shall keep and maintain a register of nominations received from its shareholders. On receipt of nomination in the prescribed **Form No. SH.13**, the company secretary shall verify the details filled in Nomination Form and also tally the signatures of the shareholders with the specimen available with the company. On verifying the particulars, the same shall be recorded in the register of nominations and/or Register of members.
- (2) On being informed about the death of its shareholder, the company should check whether the deceased shareholder had submitted nomination form and the same was valid on the date of death. If so, the company should send a notice to the nominees to elect either to be registered as holders thereof or to transfer the shares as the deceased holder could have made.
- (3) The company may also receive a notice from the nominee to elect either to be registered as a holder or to transfer the shares as the deceased could have done, along with required documents i.e. death certificates, share certificates and an application containing full particulars of the nominee such as name in full, father's/husband's name, occupation, age, address in full, specimen signature duly attested by the magistrate/notary public or Banker of the nominee with Bank account number etc.
- (4) The company can act upon such notice after having been satisfied as to the request of the nominee as shareholder in place of the deceased as elected by him or if the nominee has elected to transfer the shares of the deceased, the company can register the transfer of such shares of the deceased to the transferee(s).

PART IV- DEMATERIALISATION OF SECURITIES

DEMATERIALISATION OF SECURITIES

Dematerialisation of securities means holding of securities in electronic form in lieu of physical certificates. Dematerialisation is comparable to keeping your money in a bank account. In demat form, physical share certificates are replaced by electronic book entries; purchase of shares are reflected as credits in demat account and sales are reflected as debits. The risk associated with physical share certificates such as loss, replacement, theft, damage etc. are overcome in the share certificates held in Dematerialisation form which are totally risk free.

- Dematerialisation of shares of a company is regulated by the Depositories Act, 1996
- According to the Depositories Act, 1996, an investor has the option to hold securities either in physical or electronic form. Part of holding can be in physical form and part in demat form. However, SEBI has notified that settlement of market trades in listed securities should take place only in the demat mode.
- Section 29 of the Companies Act, 2013 provides that every company making public offer; and such other prescribed companies shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. Any company, other than a company mentioned above, may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
- Further, SEBI (Issue of Capital and Disclosure Requirements), 2009 has made it mandatory for a company to make a public or rights issue or an offer for sale of securities in a dematerialized form but allows an option to be given to shareholders to receive the security certificates or hold securities in dematerialized form with a depository.
- Section 8 of the Depositories Act provides that every person subscribing to shares offered by a company shall have the option either to receive the share certificates or hold shares with a depository in electronic form. Where a person opts to hold his shares with a depository, the company shall intimate such depository the details of allotment of the shares and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of the shares [Sub-section (2) of Section 8].
- Section 9 of the Depositories Act clarifies that all the securities held by a depository shall be dematerialised and shall be in a fungible form that is, they do not bear any notable feature like distinctive number, folio number or certificate number. Once shares get dematerialized, they lose their identity in terms of share certificate, distinctive numbers and folio numbers.
- According to Section 10 of the Depositories Act, a depository shall be deemed to be the registered owner of the shares for the purposes of effecting transfer of ownership of the shares on behalf of a beneficial owner and the depository as a registered owner shall not have any voting rights or any other rights in respect of the shares held by it. It is only the beneficial owner of the shares who shall be entitled to all the rights and benefits and be subject to all the liabilities in respect of his shares held by a depository.
- Every depository shall maintain a register and an index of beneficial owners in the manner provided in Section 88 of the Companies Act, 2013.

Procedure for dematerialisation of shares by the shareholder

1. For the purpose of Dematerialisation of the shares of a registered shareholder of a company, the

shareholder has to enter into an agreement with a depository through a participant in the manner specified by the bye-laws, for availing of its services [Refer Section 5 of the Depositories Act.]

2. Section 6(1) of the Act lays down that a person who has entered into an agreement under Section 5 shall surrender the certificate of the shares, for which he seeks to avail the services of a depository, to the company in the manner specified in the SEBI (Depositories and Participants) Regulations, 1996.
3. According to Sub-section (2) of Section 6 of the Act, the company, on receipt of the share certificate under Sub-section (1) from such a shareholder, shall cancel the certificate, (which action is referred to as Dematerialisation of shares) and substitute in its records, the name of the depository as the registered owner in respect of those shares and accordingly inform the depository.
4. On receipt of the information from the company under Sub-section (2), the depository shall enter the name of the shareholder in its records as the beneficial owner of the shares and inform the company, who shall in turn inform the shareholder that his shares have been dematerialized and his name has been entered in the depository's electronic records [Refer Sub-section (3) of Section 6 of Depositories Act, 1996.
5. A Dematerialisation Request Form (DRF) issued by the Depository Participant is to be filled and deposited with the concerned DP together with certificates after writing "Surrendered for Dematerialisation" on the face of each certificate.
6. The DP will send DRF along with the certificates to the concerned company for confirmation of its genuineness simultaneously to Share Transfer Agents electronically through the Depository (NSDL or CDSL as the case may be).
7. After checking the genuineness of the certificates and DRF the company/ Share Transfer Agents destroy the certificates and send a confirmation to the NSDL or CDSL which, in turns, confirm the dematerialisation of securities to DPs.
8. DPs on receipt of such confirmation should inform the investor accordingly.

Procedure for dematerialisation of shares by the company

A company proposing to have its shares dematerialized is required to take the following procedural steps:

1. It should ensure that its articles of association do contain an article which authorizes the company to have its securities dematerialized. If the articles of the company do not contain such a provision, it shall be required to alter its articles by passing a special resolution in general meeting in accordance with the provisions of Section 14 of the Companies Act, 2013 so as to include such a provision and thereafter comply with the provisions of the Depositories Act, 1996 and the SEBI (Depositories and Participants) Regulations, 1996 for dematerialisation of its securities.

(For a specimen of the special resolution for alteration of articles of association of the company to include an article authorizing the company to have its securities dematerialised, please see Annexure VII at the end of this study).

2. The said company, which is desirous of dematerialising any of its above-detailed securities, after having altered its articles of association to incorporate an article to authorize the company to dematerialize its securities, will have to approach a depository for the purpose. The depository shall enter into an agreement with the company in respect of securities that are to be declared as eligible to be held in dematerialized form. Further, no such agreements shall be required to be entered into where the State or the Central Government is the issuer of such securities. [Refer Regulation 29(1) of the said regulations].

3. If the company has appointed a Registrar to the issue, in case of a new issue, or a share transfer agent for transfer/transmission of its existing shares, who has been granted certificate of registration by SEBI under Sub-section (1) of Section 12 of the Depositories Act, 1996, the depository shall enter into a tripartite agreement with the company and the registrar to the issue or share transfer agent, as the case may be, in respect of the securities to be declared by the depository as eligible to be held in dematerialised form. [Sub-regulation (2) of Regulation 29 of the said regulations].
4. Thereafter, the shareholders may surrender their share certificates to the company and the company shall inform the depository accordingly. According to Sub-section (2) of Section 6 of the Act, the company, on receipt of the share certificates under Sub-section (1) from its shareholders, shall cancel the certificates, (which action is referred to as dematerialisation of shares) and substitute in its records, the name of the depository as the registered owner in respect of all those shares and accordingly inform the depository.
5. On receipt of the information from the company under Sub-section (2), the depository shall enter the names of the shareholders in its records as the beneficial owners of the shares and inform the company, who shall in turn inform the shareholders that their shares have been dematerialised and their names have been entered in the depository's electronic records as beneficial owners of the shares [Refer sub-section (3) of Section 6 of Depositories Act, 1996].
6. According to Regulation 30 of the said regulations, every depository shall have systems and procedures which will enable it to coordinate with the company or its agent, and the participants, to reconcile the records of ownership of securities with the company or its agent, as the case may be, and with participants, on a daily basis.
7. Every depository shall maintain continuous electronic means of communication with all its participants, issuer companies or companies' agents, as the case may be, clearing houses and clearing corporations of the stock exchanges and with other depositories [Refer Regulation 31].
8. The depository shall satisfy the Board that it has a mechanism in place to ensure that the interests of the persons buying and selling securities held in the depository are adequately protected. [Regulation 32]
9. Where records are kept electronically by the depository, it shall ensure that the integrity of the automatic data processing systems is maintained at all times and take all precautions necessary to ensure that the records are not lost, destroyed or tampered with and in the event of loss or destruction, ensure that sufficient back up of records is available at all times at a different place [Refer Regulation 37].

TRANSFER OF DEMATERIALISED SHARES

- Section 7 of the Depositories Act lays down that every depository shall, on receipt of intimation from a participant, register the transfer of shares in the name of the transferee and where the beneficial owner or a transferee of any shares seeks to have custody of such shares, the depository shall inform the issuer accordingly.
- The transfer deed and all other provisions stipulated in Section 56 of the Companies Act, 2013 shall not apply to the transfers affected within the depository mode.
- No stamp duty is levied on transfer of securities held in demat form. Any number of securities can be transferred/ delivered with one delivery instruction. Therefore, the paperwork and signing of multiple transfer forms is done away with.

The procedure for sale of shares held in demat form is as under:-

- (i) Sale shall be made through a broker who is a member of National Stock Exchange;

- (ii) Shareholder i.e. the beneficial owner (BO) will give delivery instruction through Delivery Instruction Slip (DIS) to depository participant (DP) to debit his account and credit the broker's account. Such instruction should reach the DP's office at least 24 hours before the pay-in, failing which, DP will accept the instruction only at the BO's risk;
- (iii) The broker shall give instructions to his DP for delivery to clearing corporation of the concerned stock exchange and receive payment from clearing corporation;
- (iv) The broker shall make payment to the investor in physical form.

The procedure for purchase of securities held in demat form is as under:-

- (i) broker will receive the securities in his account on the payout day;
- (ii) broker will give instruction to its depository participant to debit his account and credit beneficial owner's account;
- (iii) BO will give 'Receipt Instruction' to DP for receiving credit by filling appropriate form. However, BO can give standing instruction for credit to his account that will obviate the need of giving Receipt Instruction every time.

Pledge or Hypothecation of Dematerialised Shares

A beneficial owner may, with the prior approval of the depository, pledge or hypothecate his shares held in a depository. Upon receipt of intimation from the beneficial owner about the pledge or hypothecation of his shares, the depository shall accordingly make entries in its records. Such an entry in the records of a depository shall be evidence of a pledge or hypothecation [Refer Section 12]. Both the pledger and pledgee must have a depository account. The procedure for pledge or hypothecation of shares held in demat form is as under:-

- (i) Investor shall submit the details of shares to be pledged to the DP in the prescribed format
- (ii) DP shall verify the records and on being satisfied that the shares are available for pledge, make a note in the records and forward the application to the Depository for approval.
- (iii) Depository shall obtain confirmation from pledgee and the records the pledge within 15 days of application.
- (iv) Depository shall send intimation to the DP of both the pledger and pledgee who will inform the pledger and pledgee respectively.
- (v) The pledgee may invoke the pledge in accordance with the terms of pledge and on such invocation the name of pledgee is entered in the Register of Beneficial Owners by the Depository.
- (vi) During the pledge is in force, the DP shall not give effect to transfer of any security without the concurrence of the pledgee.
- (vii) On closure of the loan, the pledger shall request the DP to close the pledge. The pledgee, on getting payment, shall make a request for closure of pledge to his DP.
- (viii) For making hypothecation of shares held in demat form the above procedure is to be followed. However before registering the hypothecatee as a beneficial owner, the Depository should obtain the consent from the hypothecator.

REMATERIALISATION OF SECURITIES

Rematerialisation is conversion of electronic securities into physical certificates of such securities. This can be done in the following manner:

1. Beneficial owner sends request to DP.
2. DP intimates Depository (NSDL or CDSL) of such request electronically.
3. Depository (NSDL/CDSL) confirms rematerialisation request to the company's Share Transfer Agents.
4. Share Transfer Agent updates accounts and prints certificates and confirms the Depository (NSDL/ CDSL).
5. Depository (NSDL/CDSL) updates accounts and downloads the details to the DP.
6. Share Transfer Agent dispatches certificates to holder thereof.
7. The DP also sends intimation about rematerialisation to its client.

PART V COMPLIANCES RELATED TO INSIDER TRADING AND TAKEOVERS

Powers delegated to SEBI under Companies Act 2013

Section 458 (1) states that the Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification:

The powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to the Securities and Exchange Board of India for listed companies or the companies which intend to get their securities listed and in such case, any officer authorised by the Securities and Exchange Board of India shall have the power to file a complaint in the court of competent jurisdiction.

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

The SEBI (Prohibition of Insider Trading) Regulation, 2015 comprises of five chapters and two schedules

encompassing the various regulations related to insider trading. Chapter I deal mainly with the definition used in regulation. Chapter II provides for restriction on communication and trading in securities by insiders. Chapter III deals with disclosure of trading by insiders. Company follows chapter IV deals with the code of fair disclosure and conduct to be followed by listed companies and other entities, disclosure requirements. Chapter V deals with miscellaneous matters like sanction for violation, power to remove difficulties, repeal and savings.

Sl. No.	Particulars	Regulation No./ Schedule No.	Details
1	Chapter I – Preliminary	1 and 2	Regulation 1 covers short title, commencement of regulations which are effective from May 15, 2015 Regulation 2 covers the definitions including compliance officer, connected person, Unpublished Price Sensitive Information, Generally available information, immediate relative, insider etc.
2	Chapter II – Restriction on communication and trading by insiders	3,4 and 5	Regulation 3 – Restricts communication or procurement of unpublished price sensitive information. Regulation 4 – Restricts trading when in possession of unpublished price sensitive information. Regulation 5 – Insider shall be entitled to formulate his trading plan and intimate the same to compliance officer for approval. It also imposes certain conditions attached to trading plan. Compliance officer to monitor the implementation of the trading plan.
3	Chapter III Disclosure of trading by Insiders	6 and 7	Regulation 6 – General provisions relating to disclosures by different persons. Regulation 7 – <ul style="list-style-type: none"> – Every promoter/Key Managerial Personnel and director to make initial disclosure within 30 days of these regulations taking effect; – Every KMP/Director/Promoter to give within seven days of becoming so to make initial disclosure of his holdings. – Every promoter, employee and director to disclosure within 2 days of such transaction, including a series of transactions over any calendar quarter exceeds traded value of Rs 10 lakhs. – Every company to notify the stock exchange within two days of receipt of above information. – Every other connected persons to disclosure holding/trading as may be determined by the company.
4	Chapter IV – Code of Fair Disclosure and Conduct	Regulation 8 and 9	Regulation 8: Board of Director to formulate code of fair disclosure as per principles laid down by Schedule A which is to be intimated to the stock exchange. Regulation 9 : Board of Directors to formulate code of conduct

			in line with Schedule B and a designated compliance officer to administer the code of conduct and other requirements under these regulations.
5	Chapter V – Miscellaneous	Regulation 10, 11 and 12	Regulation 10 – Sanction for violations Regulation 11- Directions by SEBI for removal of difficulties Regulation 12 – Repeal and savings Repeal of SEBI (Prohibition of Insider Trading) Regulations 1992 Any reference to SEBI (Prohibition of Insider Trading) Regulations 1992 in other regulations/guidelines etc shall be deemed to be a reference to the corresponding provisions of SEBI (Prohibition of Insider Trading) Regulations 2015.
6	Schedule A – Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair disclosure of Unpublished Price Sensitive Information (UPSI)	Schedule A	Schedule A covers principles on handling and dissemination of UPSI, designation of chief investor relations officer to deal with UPSI etc.
7	Schedule B – Minimum Standards for Code of Conduct to regulate, monitor and report trading by insiders	Schedule B	Schedule B covers aspects including reporting of compliance officer to the Board, handling of information on need to know basis, employees and connected persons to be governed by an internal code and conduct governing dealing in securities, closure of trading window, restricted list of securities, declarations before approval of trades etc.,

Important Definitions

Connected Person

“Connected person” means, –

Any person who is or has during the six months prior to the concerned Act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

Insider

“Insider” means any person who is:

- (i) a connected person; or
- (ii) in possession of or having access to unpublished price sensitive information;

Person deemed to be connected person

“Person is deemed to be a connected person”, if such person –

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- (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 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 per cent of the holding or interest;

Generally available information

“Generally available information” means information that is accessible to the public on a non- discriminatory basis.

Immediate relative

“Immediate relative” means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;

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–

- (i) Financial results;
- (ii) Dividends;
- (iii) Change in capital structure;
- (iv) Mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such Other transactions;
- (v) Changes in key managerial personnel; and
- (vi) Material events in accordance with the listing agreement 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 provides that 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

TRADING WHEN IN POSSESSION OF UNPUBLISHED PRICE SENSITIVE INFORMATION (UPSI)

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.

TRADING PLANS

Regulation 5 states that 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.

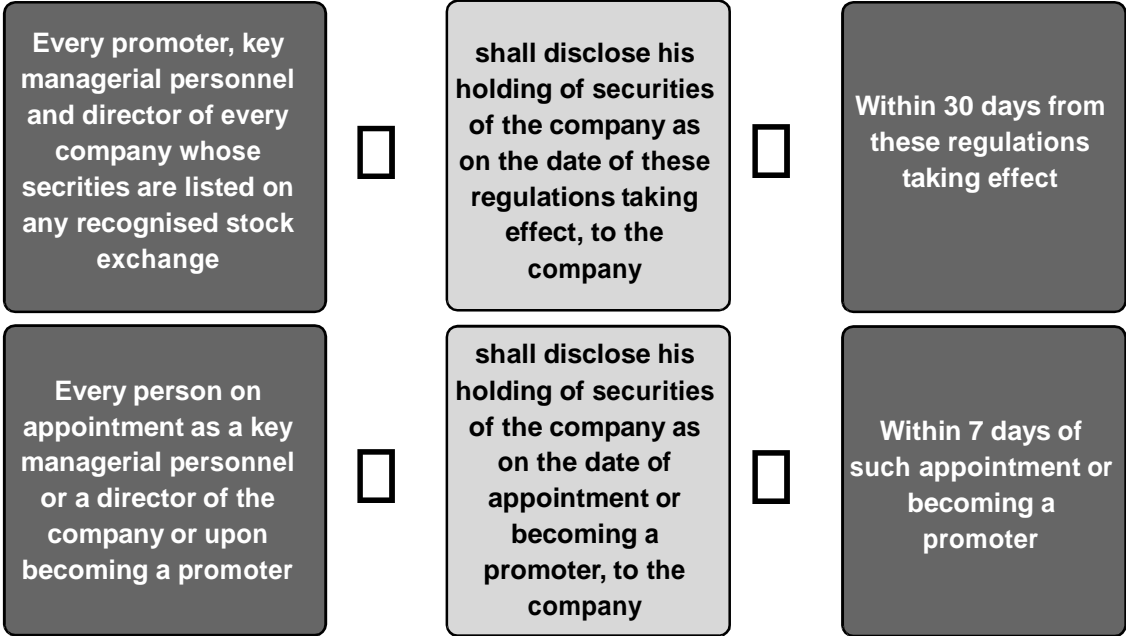
DISCLOSURES OF TRADING BY INSIDERS

Regulation 6 deals with general provisions of disclosures made :-

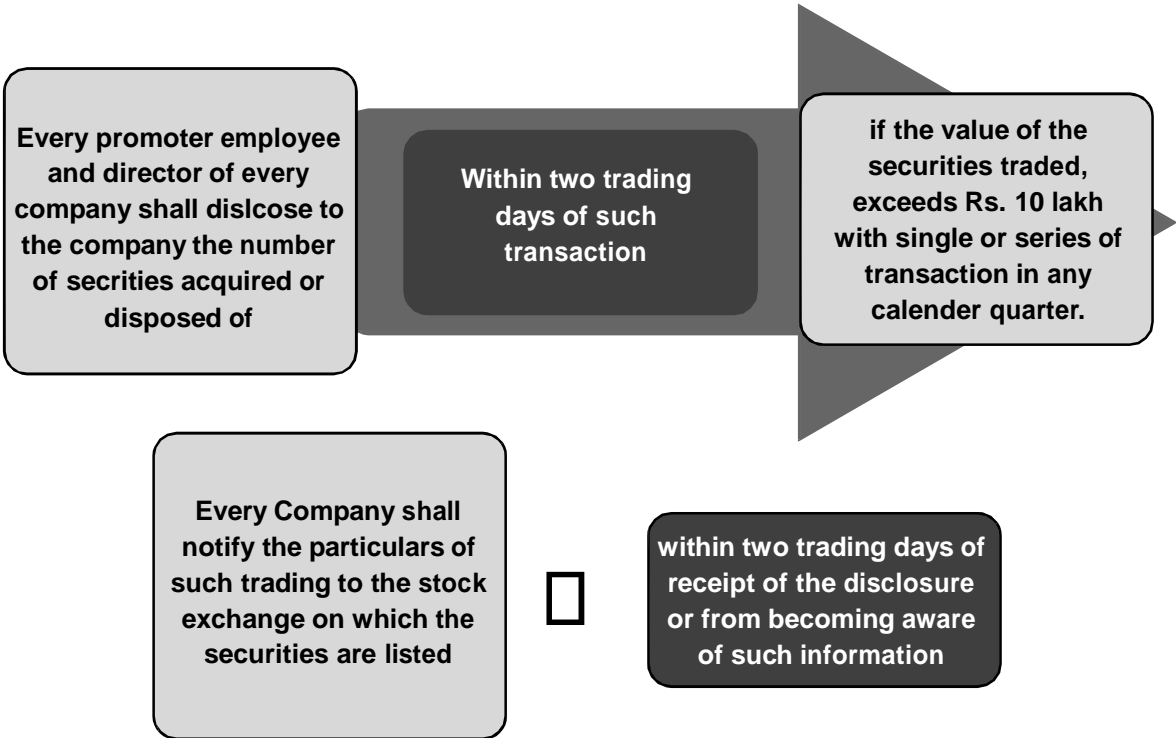
- by person shall also include those relating to trading by such person's immediate relatives, and
- by any other person for whom such person takes trading decisions.
- the disclosures of trading in securities shall also include trading in derivatives of securities if permitted under law.
- such disclosure shall be preserved for 5 years.

DISCLOSURES OF INTEREST BY CERTAIN PERSONS

INITIAL DISCLOSURE



CONTINUAL DISCLOSURE



Any company whose securities are listed on stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and the company may determine trading in securities of the company in such form and at such frequency as.

ROLE OF COMPANY SECRETARY IN COMPLIANCE REQUIREMENTS

The obligations cast upon the Company Secretary in relation to insider trading regulations can be summarized as under. The Company Secretary shall:

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. Place before SEBI the “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. Receive from every Promoter, employee and director, continual disclosures of the number of securities acquired or disposed of and changes therein, even if the value of the securities traded, exceeds Rs. 10 lakh with single or series of transaction in any calendar quarter in prescribed form within two trading days of :
 - receipt of the disclosure or
 - from becoming aware of such information
6. Ensure that no trading shall between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.
7. 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.
8. 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.
9. 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
10. Maintain confidentially 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.
11. Monitor of trades and the implementation of the code of conduct under the overall supervision of the Board of Directors of the listed company.
12. Frame and then to monitor adherence to the rules for the preservation of “Price sensitive information”.
13. Suggest any improvements required in the policies, procedures, etc to ensure effective implementation of the code.
14. Assist in addressing any clarifications regarding the Securities and Exchange Board of India (Prohibition

of Insider Trading) Regulations, 2015 and the company's code of conduct.

15. Maintain a list of all information termed as 'price sensitive information'.
16. Maintain a record of names of files containing confidential information deemed to be price sensitive information and persons in charge of the same.
17. Ensure that files containing confidential information are kept secured.
18. Keep records of periods specified as 'close period' and the 'Trading window'.
19. Ensure that the trading restrictions are strictly observed and all directors/officers/designated employees conduct all their dealings in the securities of the company only in a valid trading window and do not deal in the company's securities during the period when the trading window is closed.
20. Receive and maintain records of periodic and annual statement of holdings from directors/officers/designated employees and their dependent family members.
21. 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
22. Place before the Chief Executive Officer/Partner or a committee notified by the organization/firm, as a Compliance Officer, on a monthly basis all the details of the dealing in the securities by designated employees/directors/partners of the organization/firm.

SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulation 2011, comprises of six chapters and one schedules encompassing the various regulations related to Substantial Acquisition of Shares and Takeovers. Chapter I (Regulation 1 – 2) deals mainly with the definitions used in these regulation. Chapter II (Regulation 3-11) provides for substantial acquisition of shares, voting rights or control, threshold limit for open offer. It also contains the exemption available to the Company. Chapter III (regulation 12-23) narrates the open offer process and deals with concept related to open offer. Chapter IV (regulation 24-27) deals with the other obligations of target company, Acquirer, Manager etc., Chapter V (regulation 28-31) deals with disclosure requirements of Shareholding and control and limit for making disclosures. Chapter VI (regulation 32-35) deals with miscellaneous provisions relating to powers of SEBI and its right to issue directions.

What is Takeover?

When an "Acquirer" takes over the control of the "Target Company", it is termed as Takeover. When an acquirer acquires "substantial quantity of shares or voting rights" of the Target Company, it results into substantial acquisition of shares.

IMPORTANT DEFINITIONS

To understand the concept of the takeover code, it would be pertinent to first go through some of the definitions :

Acquirer

“Acquirer” means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company.

Acquisition

“Acquisition” means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company.

Control

“Control” includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

However a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position.

Enterprise value

Enterprise value means the value calculated as market capitalization of a company plus debt, minority interest and preferred shares, minus total cash and cash equivalents

Enterprise Value= Market capitalization+ Debt+ Minority Interest and Preferred Shares- Total Cash and Cash Equivalents

Frequently traded shares

Frequently traded shares means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is made, is at least ten per cent of the total number of shares of such class of the target company.

However, where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares.

Offer period

“Offer period” means the period between the date of entering into an agreement, formal or informal, to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be.

Persons Acting in Concert

“Persons acting in concert” means, –

- (1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.
- (2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established, –
 - (i) a company, its holding company, subsidiary company and any company under the same management or control;

- (ii) a company, its directors, and any person entrusted with the management of the company;
- (iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;
- (iv) promoters and members of the promoter group;
- (v) immediate relatives;
- (vi) a mutual fund, its sponsor, trustees, trustee company, and asset management company;
- (vii) a collective investment scheme and its collective investment management company, trustees and trustee company;
- (viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;
- (ix) an alternate investment fund and its sponsor, trustees, trustee company and manager;
- (x) a merchant banker and its client, who is an acquirer;
- (xi) a portfolio manager and its client, who is an acquirer;
- (xii) banks, financial advisors and stock brokers of the acquirer, or of any company which is a Holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual. However, this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;
- (viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;
- (ix) an alternate investment fund and its sponsor, trustees, trustee company and manager;
- (x) a merchant banker and its client, who is an acquirer;
- (xi) a portfolio manager and its client, who is an acquirer;
- (xii) banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual.

However, this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;

Target company

Target Company means a company and includes a body corporate or corporation established under a Central legislation, State legislation or Provincial legislation for the time being in force, whose shares are listed on a stock exchange.

APPLICABILITY

These regulations shall apply to direct and indirect acquisition of shares or voting rights, in or control over target company. However, these regulations shall not apply to direct and indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue in the Institutional trading platform of a recognized stock exchange.

TRIGGER POINT FOR MAKING AN OPEN OFFER BY AN ACQUIRER

25% shares or voting rights

An acquirer, along with Persons acting in concert(PAC) , if any, who intends to acquire shares which along with

his existing shareholding would entitle him to exercise 25% or more voting rights, can acquire such additional shares only after making a Public Announcement (PA) to acquire minimum twenty six percent shares of the Target Company from the shareholders through an Open Offer.

Creeping acquisition limit

An acquirer who holds 25% or more but less than maximum permissible non-public shareholding of the Target Company, can acquire such additional shares as would entitle him to exercise more than 5% of the voting rights in any financial year ending March 31 only after making a Public Announcement to acquire minimum twenty six percent shares of Target Company from the shareholders through an Open Offer.

Name	Per Holding	Creeping Acquisition	Post Holding	Applicability of SEBI Takeover Regulation, 2011
A	23%	3%	26%	Open Offer Obligations
B	7%	2%	9%	-

DISCLOSURES

In SEBI Takeover Regulations, 2011, the obligation to give the disclosures on the acquisition of certain limits is only on the acquirer and not on the Target Company. Further as against the Open Offer obligations where the individual shareholding is also to be considered, the disclosure shall be of the aggregated shareholding and voting rights of the acquirer or promoter of the target company or every person acting in concert with him.

Clause 29(2) even if such change in shareholding or voting rights result in shareholding falling below 5%, if there is change in such holding from last disclosure made

EVENT BASED DISCLOSURES

Regulation	Made	Trigger	Time Period	Made to
Regulation 29(1)	Acquirer	Acquirer + Persons acting in concert (PAC) acquiring 5% or more shares of the target company	2 working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights	SE where the shares are listed and the target company
Regulation 29(2)	Acquirer	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 and such change exceed 2% of total shareholding or voting rights in the target company by the Acquirer + PAC holding 5% or more shares, of the target company or voting rights.		

Note :

- Shares taken by way of encumbrance shall be treated as an “acquisition”.
- Share given upon release of encumbrance shall be treated as a “disposal”

- The requirement as listed above shall not apply to a Scheduled Commercial bank or public financial institution as pledge in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

CONTINUAL DISCLOSURES

Regulation	Trigger	Trigger	Made to
Regulation 30(1)	Any Person + PAC holding more than 25% shares or voting rights in the target to disclose their aggregate shareholding and voting rights	Within 7 working days from the financial year ending 31st March every year	SE where the shares are listed and target company

DISCLOSURES of Pledged/Encumbered Shares

Regulation	Made	Trigger	Time Period	Made to
Regulation 31(1)	Promoter	Promoter + PAC pledging or creating encumbrance on the shares of the target company of pledge	Within 7 working days from the creation, invocation or release	Stock exchange where the shares are listed and target company
Regulation 31(2)	Acquirer	Invocation or release of the pledge or encumbrance on the shares of the target company		

Mechanism for acquisition of shares through Stock Exchange pursuant to Tender-Offers under Takeovers, Buy Back and Delisting - SEBI Circular No. CIR/CFD/POLICYCELL/1/2015 dated April 13, 2015

Applicability

- This circular shall be applicable to all the offers for which Public Announcement is made on or after July 01, 2015.
- For all impending offers, acquirer/ promoter/ company shall have the option to follow this mechanism or the existing one.
- In case an acquirer or any person acting in concert with the acquirer who proposes to acquire shares under the offer is not eligible to acquire shares through stock exchange due to operation of any other law, such offers would follow the existing 'tender offer method'.
- In case of competing offers under Regulation 20 of the Takeover Regulations, in order to have a level playing field, in the event one of the acquirers is ineligible to acquire shares through stock exchange mechanism, then all acquirers shall follow the existing 'tender offer method'.

Procedure for tendering and settlement of shares through Stock Exchange

Acquisition Window

- The facility for acquisition of shares through Stock Exchange mechanism pursuant to offer shall be available on the Stock Exchanges having nationwide trading terminals in the form of a separate window(the "Acquisition Window").

- (b) The acquirer or company may choose to use the Acquisition Window provided by more than one Stock Exchange having nationwide trading terminal and in that case, one of the exchanges shall be chosen as the “Designated Stock Exchange”(DSE).
- (c) The Recognised Stock Exchanges having nationwide trading terminals shall also facilitate acquirers to provide the platform in case of companies exclusively listed on Recognised Regional Stock Exchanges.
- (d) In case of competing offers under Regulation 20 of the Takeover Regulations, each acquirer will apply for and use separate Acquisition Windows during the tendering period. If one acquirer chooses to use acquisition window of one Stock Exchange having nationwide trading terminal, it would not be mandatory for the other acquirer to choose the same Stock Exchange.
- (e) The acquirer/ company shall appoint a stock broker registered with the Board for the offer. Such broker may also undertake transactions on behalf of sellers.

Placing of orders and basis of acceptance

- (f) At the beginning of the tendering period, the order for buying the required number of shares shall be placed by acquirer/ company through his stock broker.
- (g) During the tendering period, the order for selling the shares will be placed by eligible sellers through their respective stock brokers during normal trading hours of the secondary market.
- (h) The securities pay-in shall be as per the early pay-in mechanism currently available in the secondary market.
- (i) The shares tendered by the shareholder under the offer shall be transferred directly to Clearing Corporation of the stock exchange providing Acquisition Window (CC) using early pay-in mechanism prior to placing the bid by the seller broker.
- (ia) Depositories shall provide information to CC about the shareholder on whose behalf the member has placed sell order. This information shall include investor PAN, beneficiary account details and bank details including IFSC code.
- (ib) The cumulative quantity tendered shall be made available online to the market throughout the trading session at specific intervals by Stock Exchange providing acquisition window during the tendering period on the basis of shares transferred to CC using early pay-in mechanism.

Finalisation of basis of acceptance

- (j) In case of offer under Takeover Regulations, the Merchant Banker to the offer shall finalise the basis of acceptance of the shares depending upon the level of acceptances received in the offer.
- (k) In case of offer under Buy Back Regulations, the company is required to announce a Record Date for the purpose of determining the entitlement and the names of the security holders who are eligible to participate in the proposed Buy-Back. Based on this information, eligible shareholders can tender shares in the Buy-Back using the Acquisition Window of the Stock Exchanges through selling brokers. However, reconciliation for acceptances shall be conducted by the Merchant banker and the Registrar to the offer after closing of the Offer and the final list shall be provided to the Stock Exchanges to facilitate settlement.

Execution of trades and settlement

- (l) Once the basis of acceptance is finalised, CC would transfer unaccepted shares directly to the shareholders account. If the securities transfer instruction is rejected in the depository system, due to any issue then such securities will be transferred to the seller broker’s depository pool account for onward transfer to the shareholder.
- (m) Acquirer will transfer the funds pertaining to the offer to CC’s bank account. CC will then settle the

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trades by making direct funds payout to shareholders. If shareholders bank account details are not available or if the funds transfer instruction is rejected by RBI/bank, due to any issue then such funds will be transferred to the seller broker's settlement account for onward transfer to shareholder.

(n) The seller broker would then issue contract note for the shares accepted in the offer.

(o) Disclosures

Additional disclosures required in Detailed Public Statement, Letter of Offer for Takeover Regulations, in Public Announcement for Buyback Regulations and Delisting Regulations:

- i. Name and address of the stock broker appointed by the Acquirer/Company;
- ii. Name of the Recognised Stock Exchanges with nationwide trading terminals where the Acquisition Window shall be available including the name of the Designated Stock Exchange.
- iii. Methodology for placement of orders, acceptances and settlement of shares held in dematerialised form and physical form
- iv. Details of Early Pay-in Account of CC.

(p) Participation by Physical Shareholders

With regard to the participation of shareholders holding physical shares, the procedure similar to the buyback for physical shares through the open market method of buyback as specified in regulation 15A of SEBI (Buyback of Securities) regulations, 1998 shall apply.

(q) Tendering of Locked in-shares

For shares which are locked-in, the selling shareholder can tender the shares in the same manner which is in existence currently i.e. through off-market.

ANNEXURES

ANNEXURE III

**SPECIMEN RESOLUTIONS OF GENERAL MEETING FOR VARIATION OF RIGHTS OF EQUITY
SHAREHOLDERS (i.e. MEMBERS)**

Resolution for the extension of the date of redemption of Preference Shares (for variation of rights)

“RESOLVED THAT consent of shareholders be and is hereby accorded to the variation of the rights attached to the Equity Shares of the Company deemed to have been caused by reason of extension of the date of redemption and increase in rate of interest of 11% Redeemable Cumulative Preference Shares (First Series) of Rs.100 each fully paid-up, agreed to by the holders of the said Preference Shares.

Explanatory Statement

First Series of 10,000 — 11% Redeemable Cumulative Preference Shares of Rs. 100 each fully paid-up issued by the Company in 2005 fell due for redemption on, 20... The date was extended and accordingly the shares were to be redeemed in five equal installments of ` 2.00 lakhs each annually commencing from20.... In the interest of the Company it has been considered expedient not to redeem these Preference Shares immediately.

In any case, in the absence of the required reserves it would not be possible to redeem the said Preference Shares in terms of Section 55 of the Companies Act, 2013. The Company's request to the Preference Shareholders to give their consent to this effect is under their consideration. A meeting of the holders of these 11% Redeemable Cumulative Preference Shares (First Series of Rs.100 each fully paid-up) has been convened to consider the necessary resolution for extension of date of redemption and increase in the rate of interest.

As holders of the Equity Shares, your rights are deemed to be affected from the date of extension of redemption in respect of First Series of the Preference Shares as aforesaid.

It is, therefore, proposed that your consent be obtained to such variation of your rights as per the resolution.

The necessary resolution for extending the date of redemption of and increasing the rate of dividend on the 11% Redeemable Cumulative Preference Shares of the company is included separately in the notice.

Directors of the company are not interested in the said resolution except to the extent of their shareholdings.

ANNEXURE IV

**Specimen resolution of general meeting for variation of rights of the holders of Redeemable
Cumulative Preference shares (1st Series) of Rs. 100 each.**

Special Resolution for Consent by three fourths holders 10,000 — 9% Redeemable Cumulative Preference shares (1st series) of Rs.100 each or for passing at the separate meeting of those holders.

RESOLVED THAT pursuant to the provisions of Section 48 and all other applicable provisions, if any, of the Companies Act, 2013 and subject to the Memorandum and Articles of Association of the Company and terms of the issue of 10,000 — 9% Redeemable Cumulative Preference Shares (1st Series) of Rs.100 each contained in the Prospectus dated 9th April, 2005 consent of the holders of 10,000 — 9% Redeemable Cumulative Preference Shares (1st series) of Rs. 100 each falling due for redemption in full on 31st December, 2011 be and is hereby accorded to the company for redemption on 31st December 2014 and also for an increase in fixed preferential dividend to 11% per annum with effect from 1st January 2012 till the date of redemption so extended to 31st December 2014 and the Board of Directors be and is hereby authorized to do all acts, deeds and things in the matter of giving effect to this resolution.

Explanatory Statement

The Board of Directors of the Company has, in terms of Prospectus dated 9th April 2005 for issuing 10,000 —

9%. Redeemable Cumulative Preference Shares (1st series) of Rs. 100 each, decided in their meeting held on 11.01.2011 to extend the date of redemption of two years from 31.12.2011 to 31st December 2014 and in consideration of such extension to increase the fixed preferential dividend from 9% to 11% per annum with effect from 1st January 2012.

Pursuant to the provisions of Section 48 of the Companies Act, 2013 consent/ approval of the holders of the said shares is necessary to be obtained by way of special resolution. Hence, the resolution as set out in the notice is recommended for approval of the holders thereof.

Since this variation in the rights of the holders of 9% Redeemable Cumulative Preference Shares (1st series) of Rs.100 each shall affect the rights of the holders of issued equity shares of the company. Hence, the consent of the equity shareholders has been obtained by way of special resolution in the separate Extraordinary General Meeting held on 28th February 2011.

None of the director is concerned or interested in the proposed resolution.

ANNEXURE V

SPECIMEN OF THE BOARD RESOLUTION APPROVING THE REGISTRATION OF TRANSFER OF SHARES

“RESOLVED THAT Registration of transfer of fully paid equity shares of the company as per details in the register of share transfers of the company entered on page... to, entries Nos.....to..... (both inclusive), which was placed before the meeting and each page was initialled by the chairman of the meeting as a mark of identification, be and is hereby approved; and

RESOLVED FURTHER THAT Shri, Company Secretary be and is hereby authorized to endorse the relevant share certificates under his signature, arrange for their dispatch to the transferees of the shares and make appropriate entries in the register of members and other records of the company.”

ANNEXURE VI

SPECIMEN OF BOARD RESOLUTION APPROVING REGISTRATION OF TRANSMISSION OF SHARES

“RESOLVED THAT Transmission ofno.s of fully paid equity shares of the company bearing distinctive numbersto.....(both numbers inclusive) presently registered in the name of Shriwho has been reported as deceased onin the district ofwhich is situated in the state of....., in the name of Shrison of Shriresident of be and is hereby approved.

RESOLVED FURTHER THAT since the company has received a letter from the said Shri....., intimating to the company that he has decided to have the said shares registered in his name, the said shares be registered in his name; and

RESOLVED FURTHER THAT Shri, Company Secretary, be and is hereby authorized to enter the name of the said Shri, in the register of members of the company and send the relevant share certificates to him after appropriately endorsing them in his name.”

SPECIMEN OF SPECIAL RESOLUTION FOR ALTERATION OF ARTICLES OF ASSOCIATION OF THE COMPANY TO INCLUDE AN ARTICLE AUTHORISING THE COMPANY TO HAVE ITS SECURITIES DEMATERIALISED

“RESOLVED THAT pursuant to Section 14 of the Companies Act, 2013, the articles of association of the company be and are hereby altered in the following manner:

After article No..., the following be inserted as article ... :

Article ... Dematerialization of Securities

A. Definitions:

For the purpose of this article:-

‘Beneficial Owner’ means a person or persons whose name is recorded as such with a depository. ‘SEBI’ means the Securities and Exchange Board of India.

‘Depository’ means a company formed and registered under the Companies Act, 2013, and which has been granted a certificate of registration to act as a depository under the Securities and Exchange Board of India Act, 1992; and

‘Security’ means such security as may be specified by SEBI from time to time.

B. Dematerialisation of Securities

Notwithstanding anything contained in these articles, the company shall be entitled to dematerialise its securities and to offer securities in a dematerialised form pursuant to the Depositories Act, 1996.

C. Options for investors

Every person subscribing to securities offered by the company shall have the option to receive security certificates or to hold the securities with a depository. Such a person who is the beneficial owner of the securities can at any time opt out of a depository, if permitted by the applicable law in respect of any security in the manner provided by the Depositories Act, 1996 and the company shall, in the manner and within the time prescribed, issue to the beneficial owner the required certificates of securities.

If a person opts to hold his security with a depository, the company shall intimate such depository the details of allotment of the security and/or transfer of securities in his name and on receipt of the information, the depository shall enter in its record the name of the allottee and/or transferee as the beneficial owner of the security.

D. Securities in Depositories to be in Fungible Form

All securities held by a depository shall be dematerialised and be in fungible form. Nothing contained in Sections 89 and 186 of the Act shall apply to a depository in respect of the securities held by it on behalf of the beneficial owners.

E. Distinctive Numbers of Securities held in a Depository

Nothing contained in the Act or these articles regarding the necessity of having distinctive numbers for securities issued by the company shall apply to securities held with a depository.

F. Rights of Depositories and Beneficial Owners

- (i) Notwithstanding anything to the contrary contained in the Act or these articles, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of the beneficial owner.

- (ii) Save as otherwise provided in (a) above, the depository as the registered owner of the securities shall not have any voting rights or any other rights in respect of the securities held by it.
- (iii) Every person holding securities of the company and whose name is entered as the beneficial owner in the records of the depository shall be deemed to be a member of the company. The beneficial owner of securities shall be entitled to all the rights and benefits and be subject to all the liabilities in respect of his securities which are held by a depository.

G. Service of Documents

Notwithstanding anything to the contrary contained in the Act or these articles, where securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.

H. Transfer of Securities

Nothing contained in Section 108 of the Act or these articles shall apply to a transfer of securities effected by a transferor and transferee both of whom are entered as beneficial owners in the records of a depository.

I. Allotment of Securities Dealt in a Depository

Notwithstanding anything contained in the Act or these articles, where securities are dealt in a depository, the company shall intimate the details thereof to the depository immediately on allotment and/or registration of transfer of such securities.

J. Register and Index of Beneficial Owners

The register and index of beneficial owners maintained by a depository under the Depositories Act, 1996, shall be deemed to be the register and index of members and security holders for the purposes of these articles.”

Explanatory Statement

With the enactment of the Depositories Act, 1996, and coming into operation of the depository system, some of the provisions of the Companies Act, 2013, relating to the issue, holding, transfer, transmission of equity shares and other securities of companies have been amended to facilitate the implementation of the depository system.

The depository system of holding securities in an electronic mode is a far safer and more convenient method of securing, holding and trading in the securities of a company.

Under the depository system, the securities can be dematerialised. The company intends joining a depository. It is, therefore, proposed that the company’s articles of association be suitably altered, as set out in the proposed resolution to enable it to dematerialise its securities. The resolution contains (i) definitions of some of the important terms used in the system; (ii) dematerialisation of securities; (iii) options for investors; (iv) securities in depositories to be in fungible form; (v) distinctive numbers of securities held in a depository; (vi) rights of depositories and beneficial owners; (vii) service of documents; (viii) transfer of securities; (ix) allotment of securities dealt in a depository; and (x) register and index of beneficial owners.

None of the directors of the company is concerned or interested in the proposed resolution except to the extent of the the shareholdings of the directors.

LESSON ROUND UP

- A Company is composed of members, though it has its own entity distinct from members.
- A member means a shareholder of a company whose name is entered in the register of members.
- The person desirous of becoming a member of a company must have the legal capacity of entering into an agreement in accordance with the provisions of Section 11 of the Indian Contract Act, 1872
- In the case of subscriber to the memorandum, no agreement besides the memorandum is necessary. He is deemed to be the member of the company.
- A member ceases to be a member of a company when his name is removed from the register of members or register of beneficial owners.
- According to Section 6 of the Companies Act, the Act overrides the memorandum and articles of association and any provision contained in these documents repugnant to the provisions of the Companies Act, is void.
- In general parlance, “transfer” takes place when title to the property is transferred from one person to another whereas “transmission” refers to devaluation of title by operation of law.
- Transmission may takes place either by succession or by testamentary transfer.
- According to Section 44 of Companies Act, 2013, shares, debentures or other interest of a company are moveable property, transferable in the manner provided by the articles of association of the company.
- At present, stamp duty applicable for transfer of shares is 25 paise for every one hundred rupees or part thereof of the value of share. Section 56 of the Companies Act requires that where share transfer form is delivered to the company should be adequately stamped.
- Shares of a private company are not marketable securities due to restriction on right to transfer. Such shares by their very nature are not freely transferable in the market.
- The securities of a public company are freely transferable, subject to the provisions that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as contract.
- Dematerialisation of securities means holding of securities in electronic form in lieu of physical certificates. Dematerialisation is comparable to keeping your money in a bank account.

SELF-TEST QUESTIONS

1. Write the procedure for becoming a member by subscribing to the memorandum of association.
2. What is the meaning of becoming a member by acquiescence or estoppels.
3. Write in detail the ways of Cessation of membership.
4. Write the procedure for Variation of Members' Rights.
5. What do you understand by expulsion of members? Whether a company can legally expel a member.
6. Enumerate the steps for transfer of dematerialised shares.
7. Write short notes on the following:-
 - (a) Dematerialisation of securities
 - (b) Transmission of shares to Nominee
 - (c) Modes of acquiring membership
 - (d) Transfer and Transmission.

Lesson 8

Key Managerial Personnel

LESSON OUTLINE

- Key Managerial Personnel
- Procedure for Managing Director's Appointment
- Remuneration of Directors including Managing Director/ Whole-Time Director/ Manager
- Waiver of Recovery of Remuneration
- Procedure for removal of Managing Director/ Whole-Time Director before expiry of his term of office
- Board Composition
- Procedure for appointment of Directors
- Removal of Directors
- Vacation of Office of Directors
- Loans to Directors
- Disclosure of interest by Director
- Related Party Transactions
- Disclosures under SEBI (Listing Obligations and Disclosure Requirements), 2015
- Role of Audit Committee
- Contract of Employment with Managing or Whole Time Directors
- Compensation for loss of office of Directors and other Managerial Personnel
- Powers of Board
- Directors' and Officers' Liability Insurance
- Filing of Agreements with Managerial Personnel
- Annexure and Specimen Resolutions
- LESSON ROUND UP
- SELF TEST QUESTION

LEARNING OBJECTIVES

In addition to managing director, manager and whole-time director, the term 'Key Managerial Personnel' includes the chief executive officer, company secretary and the chief financial officer under section 2(51). These are the employees of the company who hold key positions in the company and the law imposes greater responsibility of overall functioning of company including the duty to protect the interest of all stakeholders.

This chapter deals with the legal and procedural aspects of appointment and removal of KMP,

powers and duties of KMP, appointment and removal of directors, managing directors. It also includes provisions relating to loan to directors, Related party transactions, etc.

KEY MANAGERIAL PERSONNEL

Section 203 of the Act read with Rule 8 of the Companies (Appointment And Remuneration of Managerial Personnel) Rules, 2014 provides that 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 comprising of

- Managing director, or (Chief executive officer (CEO) or manager and in their absence , a whole time director)
- Company secretary ;and
- Chief financial officer (CFO).

Thus, private companies and public companies with a paid up share capital of less than ten crore rupees have been exempted from appointing key managerial personnel.

However, every company which has a paid up share capital of five crore rupees or more are required to have a whole-time company secretary. In such a case, the company secretary will not be termed as KMP (Refer Rule 8A).

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 6 months from the date of such vacancy.

If a company contravenes the provisions relating to appointment of whole time key managerial personnel, the company shall be punishable with fine and every director and key managerial personnel of the company who is in default shall also be punishable with fine.

Procedure to appoint Key Managerial Personnel

1. Hold the Board meeting and pass the Board resolution containing the terms and conditions of the appointment of key managerial personnel.
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 (Return of appointment of Managing Director, Whole Time Director and Manager).
6. File DIR-12 (Particulars of appointment of Directors and the Key Managerial Personnel and changes among them) along with the fee prescribed in Companies(Registration of Offices and Fees) Rules, 2014.

MANAGING DIRECTOR

Section 2(54) provides that “managing director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation for the purposes of this definition, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.

As per above definition, a managing director has to be a director before he can be appointed as 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 a director or an additional director.

An individual shall not be appointed or reappointed as the chairperson of the company as well as the managing director or CEO of the company at the same time unless, the articles provide otherwise or company does not carry multiple businesses. However, such class of companies engaged in multiple businesses and which has appointed one or more CEOs for each such business as may be notified by the Central Government are exempt from the aforesaid provision. Also, in terms of Section 196(1), no company shall appoint or employ at the same time a managing director or a manager.

WHOLE TIME DIRECTOR

Section 2(94) provides that “whole-time director” includes a director in the whole-time employment of the company.

If a whole time employee of a company is also appointed as a director of the company, he is in the position of a whole time director of the company. This is equally applicable in the case of an alternate director working as whole time director.

MANAGER

Section 2(53) defines “manager” as 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, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

Unlike the managing director, who is entrusted with substantial powers of management of the company, a manager has the management of the whole, or substantially the whole, of the affairs of a company.

According to section 196 of the Companies Act, 2013, no company shall appoint at the same time, a managing director and a manager.

Appointment of Managing Director

A company can appoint either Managing Director or Manager not both. [Section 196(1)] Appointment of Managing Director shall be for a term which must be less than five years. No re-appointment shall be made earlier than one year before the expiry of his term.

The minimum age for appointment for these positions is twenty – one years and normal retirement age is seventy years. A company may appoint a person on these positions, who has attained the age of seventy years by passing a special resolution and an explanatory statement justifying such appointment shall be annexed to the notice for motion of appointment.

Appointee should not be an undischarged insolvent nor has any time been adjudged as an insolvent. Appointee has not any time suspended payment to his creditors or has made a composition with them. Appointee should not be a convict of an offence and sentenced for a period of more than six months. [Section 196 (3)]

According to Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 every listed company and every other company having a paid-up share capital of five crore rupees or more shall have

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whole-time key managerial personnel.

In terms of section 2(54), a managing director may be appointed in any of the four ways, namely :

- (a) By virtue of an agreement with the company;
- (b) By virtue of a resolution passed by the company in general meeting,
- (c) By virtue of a resolution passed by the Board of directors, and
- (d) By virtue of Articles of Association.

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 [Section 203(2)].

In case of appointment of a managing director, whole-time director or manager, the terms and conditions of such appointment and remuneration payable shall 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. [Section 196(4)]

A return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.

Sub-section (4) of Section 196 shall not apply to a Specified IFSC public company.

Where an appointment of 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 [Section 196(5)].

Sub-Section (4) and (5) of section 196 shall not be applicable to private Companies as notified by MCA vide its notification (1/2/2014 – C.L.V) dated 5-06-2015 which means in case of appointment of a managing director, whole-time director or manager, approval by the company at a general meeting and that of Central Government is not required.

Sub-section (2), (4) and (5) of section 196 shall not be applicable to Government Companies as notified by MCA vide its notification (1/2/2014 – C.L.V) dated 5-06-2015 which means that a govt company:

- May appoint or re-appoint any person as its Managing Director, Whole time Director or manager for a term exceeding five years at a time;
- Does not require the approval by the company at a general meeting;
- Does not require the approval of Central Government.

Procedure for Managing Director's Appointment

Appointment of Managing Director is to be made according to Section 196 and its remuneration should be in accordance with Section 197 and Schedule V of the Companies Act, 2013. Provisions relating to managerial remuneration are not applicable to a private company.

1. Convene and hold a Board meeting after giving to all the directors due notice as required under Section 173 of the Companies Act, for transacting, *inter alia*, the following business:-
 - (a) take a decision on the person to be appointed as managing director after fully ensuring that he does not suffer from any disqualification in Sections 164, 196, 203, Schedule V and any other provision of the Companies Act;
 - (b) approve the draft agreement to be signed and executed by and between the company and the proposed managing director (it is not mandatory);
 - (c) fix time, date and venue for holding a general meeting of the company;

- (d) approve notice of the general meeting along with the explanatory statement as required by Sections 101 and 102 of the Act after keeping in mind the requirements of Section 190 of the Act and
 - (e) to authorise company secretary to issue notice of the general meeting on behalf of the Board.
2. Hold the general meeting and get the resolution passed approving appointment of the managing director.
 3. In case the appointment of the managing director is not in accordance with the provisions of Schedule V of the Act, the company is required to obtain approval of the Central Government as per Section 201 of the Act.
 4. For getting the approval of the Central Government under Section 201 certain formalities are to be complied with:
 - (a) As required by Section 201 of the Act, the Company shall give a general notice to the members of the company indicating the nature of the application proposed to be made, and
 - (b) this notice has to be published at least once in the principal language of the district in which the registered office of the company is situate and circulating in that district and also once in English in an English newspaper also circulating in that district,
 - (c) the company shall attach a copy of this notice with the application together with certificate as to the due publication thereof.
 - (d) The application should be filed electronically in MR – 2 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 accompanied by the prescribed fees. Details of proposal needs to be entered along with certain attachments as given below:
 - i. Copy of the calculation sheet of effective capital;
 - ii. Copy(ies) of Board Resolutions;
 - iii. Copy of resolution of Nomination and Remuneration Committee along with its composition and certificate by the nomination committee that the remuneration is as per remuneration policy of the company;
 - iv. copy of share holders resolution;
 - v. certificate form auditor or company secretary of the company or company secretary in practice with regard to compliance of Section 196;
 - vi. Certificate of no – default in repayment of debts for continuous period of thirty days in the preceding financial year from a director or company secretary of the company;
 - vii. No objection certificate from the financial institutions or banks to whom the company has defaulted;
 - viii. copy of order of BIFR or NCLT with scheme of revival of the company;
 - ix. Copy of Draft agreement between the company and the proposed appointee;
 - x. Newspaper clipping of notices published under section 201
 - xi. Copy of visa or passport in case the proposed appointee is foreign national;
 - xii. Copies of education or professional qualification certificate;
 - xiii. Statement as per item (iv) of 3rd proviso of Section II of Part II of Schedule V of the Companies Act, 2013
 - xiv. Statement as per item (iv) of third proviso of section II of Part II of Schedule V to the Companies Act, 2013
 - xv. Projections of the Turnover and net profits for next three years;
 - xvi. Calculation of estimated profit under section 198 of the Act;

- xvii. An application under Section 460 of the Act for condonation of delay;
 - xviii. Full and proper justification in favour of the proposal along with bio-data of the appointee;
 - xix. Documentary proof regarding compliance of the provisions of Section 196 of the Companies Act, 2013 at the time of appointment/ re-appointment of the proposed appointee;
 - xx. Certificate by the secretary of the company or CA/CS in whole time practice to be notified erstwhile;
 - xxi. Details, if applicant company is a subsidiary of listed company;
 - xxii. Certificate from CA/CS in whole time practice along with calculation of excess remuneration paid to the appointee;
5. Execute the agreement, as approved by the Board, with the managing director.
6. Make necessary entries in the register of directors etc. and other records and registers of the company.
7. File the following documents with the ROC:
- (a) The company should file with the ROC return of appointment of the managing director in Form MR -1, within sixty days as per Section 196(4) of the appointment and the return must be certified by the auditors of the company or the company secretary or a secretary in whole-time practice.
The Mandatory attachments for Form MR – 1:
 - i. Copy of Board Resolution,
 - ii. Copy of Shareholders Resolution
 - iii. Copy of letter of consent to act as managing director
 - iv. Copy of Central Government Approval
 - v. Copy of certificate by nomination and remuneration committee
 - (b) Form DIR – 12 for particular of appointment of a key managerial personnel, within thirty days of the appointment.
 - (c) Form MGT – 14 for special resolution within thirty days of the appointment.
9. Inform all concerned about the appointment of the managing director. It is advisable to issue a general notice in newspapers about the appointment of the managing director.

As per Rule 7(2) of the Companies (Appointment and Remuneration of Managerial Personnel), Rules, 2014, the companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, subject to complying with the following conditions namely:-

- (i) 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 section 178 also by the Nomination and Remuneration Committee, if any, and while doing so record in writing the clear reason and justification for payment of remuneration beyond the said limit;
- (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon preference shares and dividend on preference shares for a continuous period of thirty days in the preceding financial year before the date of payment to such managerial personnel;
- (iii) the approval of shareholders by way of a special resolution at a general meeting of the company for payment of remuneration for a period not exceeding three years;
- (iv) a statement along-with a notice calling the general meeting referred to clause (iii) of sub-rule (2) above,

shall contain the information as per sub clause (iv) of second proviso to clause (B) of section II of part-II of Schedule V of the Act including reasons and justification for payment of remuneration beyond the said limit (v) the company has filed Balance Sheet and Annual Return which are due to be filed with the Registrar of Companies

Appointment of a Person as Managing Director, who is Managing Director of Another Company

According to Section 203(3) of the Companies Act, 2013, Whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. 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.

In case a case, procedure shall remain same as discussed earlier but notice for the board meeting shall be a special notice to all the directors then in India.

Appointment of Managing Director/Whole-Time Director/Manager of a Private Company

Sub-Section (4) and (5) of section 196 shall not be applicable to private Companies as notified by MCA vide its notification (1/2/2014 – C.L.V) dated 5-06-2015 which means in case of appointment of a managing director, whole-time director or manager, approval by the company at a general meeting and that of Central Government is not required.

REMUNERATION OF DIRECTORS INCLUDING MANAGING DIRECTOR/WHOLE-TIME DIRECTOR/MANAGER

The remuneration payable to directors of a company shall be subject to the provisions of section 197 of the Companies Act, 2013. Such remuneration is required to be determined by:

- (a) Either articles of association; or
- (b) By resolution; or
- (c) of required by articles by a special resolution

A director may be paid remuneration either by way of a monthly payment or at specified percentage of the net profits or partly by one way and partly by the other.

The remuneration payable shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

In case, a director renders some services which are professional in nature and the director possesses the requisite qualification for rendering of such services (in the opinion of Nomination and Remuneration Committee, if applicable or the Board), then such remuneration shall not be included for considering the limits.

The manner of computation of net profits for the purpose of this section is provided in section 198.

There is no restriction relating to managerial remuneration for a private company. [Section 197(1)]

Section 197 shall not apply to Government company [MCA vide its notification no. 463(E) dated 5-06-2015]. Section 197 provides for overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits. Therefore, the ceilings w.r.t remuneration as provided in section are not applicable to Government company.

Total managerial remuneration payable by a public company to its directors (including Managing Director and Whole Time Director) and Manager in a financial year shall not exceed eleven percent of net profit of the company. Manner of calculation is given in Section 198. [Section 197(1)] Any remuneration exceeding 11% of net profit limit

may be payable subject to compliance of conditions given in Schedule V. In case these requirements of Schedule are not fulfilled, such remuneration will be subject to the approval of Central Government. [First Proviso to Section 197(1)]

The remuneration of any one Managing Director or Whole Time Director or Manager shall not exceed 5% of net profit. Where, there is more than one Managing Director or Whole Time Director, the overall limit is 10% of net profit. The remuneration may exceed this limit only after approval by company in general meeting and after satisfying the conditions given in this Section and Schedule V. [Second Proviso to Section 197(1)]

This percentage shall be exclusive of any sitting fees payable to directors for attending meetings of Board or Committee.

Second proviso to sub-section (1) of Section 197 shall not be applicable to Nidhi Companies which means that remuneration may be payable to any one managing director; or whole time director or manager exceeding five percent of the net profits of that company. Also there is no restriction for payment of remuneration to non-executive directors. [MCA notification dated 5-06-2015].

As per Section 197(3), in case, a company has no profits or its profits are inadequate, the company shall pay to its directors any remuneration subject to the provisions of Schedule V to the Companies Act, 2013.

In case, the company is not able to comply with the provisions of schedule V, then approval from Central Government is required.

It is important to note that Section 197 is not applicable to Specified IFSC public company.

Sitting fee

A director may receive sitting fee for attending meetings of Board or Committee. The amount of such fees shall not exceed the amount as prescribed in rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

Rule 4 provides that sitting fee would be as may be decided by the Board of directors which shall not exceed Rs. one lakh per meeting of Board or Committee.

It is also provided in the Rule that for independent directors and women director, the sitting fee shall not be less than sitting fee payable to other directors.

Remuneration to Independent Directors

An independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as approved by members.

Procedure for Fixation of Remuneration to Managing Director/Whole-time Director/Manager

The procedure to be followed for fixation of remuneration of Managing Director is as follows:

1. Convene a Board meeting after giving notices to all the directors of company in accordance with Section 173, to fix the date, time, place and agenda of the General Meeting to pass an ordinary or special resolution for fixing the remuneration of Managing Director.
2. Send the notice in writing atleast twenty-one days before the date of General Meeting.
3. Hold the general meeting and pass the ordinary or special resolution as the case may be.
4. If special resolution has been passed, then file Form MGT – 14 along with explanatory statement with the Registrar of Companies within thirty days.
5. If the remuneration fixed in the meeting, is more than stipulated under Section 197 read with Schedule V to the Act, the application to Central Government should be filed electronically in MR – 2 of the Companies

(Appointment and Remuneration of Managerial Personnel) Rules 2014 accompanied by the prescribed fees for approval of payment of such excess remuneration. Details of proposal needs to be entered along with certain attachments as given below:

- i. Copy of the calculation sheet of effective capital;
 - ii. copy(ies) of Board Resolutions;
 - iii. Copy of resolution of Nomination and Remuneration Committee along with its composition and certificate by the nomination committee that the remuneration is as per remuneration policy of the company;
 - iv. copy of share holders resolution;
 - v. certificate form auditor or company secretary of the company or company secretary in practice with regard to compliance of Section 196;
 - vi. Certificate of no – default in repayment of debts for continuous period of thirty days in the preceding financial year from a director or company secretary of the company;
 - vii. No objection certificate from the financial institutions or banks to whom the company has defaulted;
 - viii. copy of scheme of approval by the Tribunal for the revival of the company;
 - ix. Copy of Draft agreement between the company and the proposed appointee;
 - x. Newspaper clipping of notices published under section 201
 - xi. Copy of visa or passport in case the proposed appointee is foreign national;
 - xii. Copies of education or professional qualification certificate;
 - xii. Statement as per item (iv) of 3rd proviso of Section II of Part II of Schedule V of the Companies Act, 2013
 - xiii. Statement as per item (iv) of third proviso of section II of Part II of Schedule V to the Companies Act, 2013
 - xiv. Projections of the Turnover and net profits for next three years;
 - xv. Calculation of estimated profit under section 198 of the Act;
 - xvi. An application under Section 460 of the Act for condonation of delay;
 - xvii. Full and proper justification in favour of the proposal along with bio-data of the appointee;
 - xviii. Documentary proof regarding compliance of the provisions of Section 196 of the Companies Act, 2013 at the time of appointment/ re-appointment of the proposed appointee;
 - xix. Certificate by the secretary of the company or CA/CS in whole time practice to be notified erstwhile;
 - xx. Details, if applicant company is a subsidiary of listed company;
 - xxi. Certificate from CA/CS in whole time practice along with calculation of excess remuneration paid to the appointee;
6. Execute the agreement, as approved by the Board and Central Government (where applicable), with the managing director.
 7. Make necessary entries in the register of directors etc. and other records and registers of the company.
 8. File the following documents with the ROC:
 - (a) The company should file with the ROC return of appointment of the managing director in Form MR -1, within sixty days as per Section 196(4) of the appointment and the return must be certified by the auditors of the company or the company secretary or a secretary in whole-time practice.

The Mandatory attachments for Form MR – 1:

- i. Copy of Board Resolution,
 - ii. Copy of Shareholders Resolution
 - iii. Copy of letter of consent to act as managing director
 - iv. Copy of Central Government Approval
 - v. Copy of certificate by nomination and remuneration committee
- (b) Form DIR – 12 for particular of appointment of a key managerial personnel, within thirty days of the appointment.
- (c) Form MGT – 14 for special resolution within thirty days of the appointment.
9. Inform all concerned about the appointment of the managing director. It is advisable to issue a general notice in newspapers about the appointment of the managing director.

Procedure for Payment of Remuneration to Part-time Directors

According to second proviso to Section 197(1), 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.

Second proviso to sub-section (1) of Section 197 shall not be applicable to Nidhi Companies which means that remuneration may be payable to any one managing director; or whole time director or manager exceeding five percent of the net profits of that company. Also there is no restriction for payment of remuneration to non-executive directors. [MCA notification dated 5-06-2015].

Further, under Section 197(5), a director may also receive a sitting Fee for attending meetings. The Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014, regarding sitting fee state; the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees one lakh per meeting of the Board or committee thereof. The Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors. For giving sitting fee, only board resolution is sufficient.

The procedure to be followed for giving remuneration to other directors as monthly amount or commission as percentage of profit is as under:

1. A Board meeting should be called and a resolution should be passed for payment of remuneration to non-whole-time directors and for convening a general meeting to secure the consent of members for such payment.
2. The notice convening the general meeting should be sent to members, directors and auditor of the company.
3. The general meeting should accordingly be held and the resolution for payment of remuneration on commission basis to non-whole-time directors should be duly passed. If the remuneration is to be paid by way of monthly, quarterly or annual payment, then make an application to the Central Government for its approval.

Revision of Remuneration of Managing Director/Whole-time Director

The remuneration of any one Managing Director or Whole Time Director or Manager shall not exceed 5% of net profit. Where, there is more than one Managing Director or Whole Time Director, the overall limit is 10% of net profit. The remuneration may exceed this limit only after approval by company in general meeting and after satisfying the

conditions given in this Section and Schedule V.

Any revision of remuneration shall also be accordingly and similar procedure as that of the fixing of remuneration at the time of appointment as discussed above.

1. As per Section 197,
2. As per Schedule V where applicable, or
3. As per Central Government approval.

WAIVER OF RECOVERY OF REMUNERATION

Section 197(9) states, If any director draws or receives, directly or indirectly, by way of remuneration any sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. Further, Section 197(10) provides, the company shall not waive the recovery of any sum refundable to it under sub-section (9) unless permitted by the Central Government.

- (a) For permission of the Central Government, the application should be filed electronically in MR – 2 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 accompanied by the prescribed fees. Details of proposal needs to be entered along with certain attachments as given below:
 - i. Copy of the calculation sheet of effective capital;
 - ii. Copy(ies) of Board Resolutions;
 - iii. Copy of resolution of Nomination and Remuneration Committee along with its composition and certificate by the nomination committee that the remuneration is as per remuneration policy of the company;
 - iv. copy of share holders resolution;
 - v. certificate form auditor or company secretary of the company or company secretary in practice with regard to compliance of Section 196;
 - vi. Certificate of no – default in repayment of debts for continuous period of thirty days in the preceding financial year from a director or company secretary of the company;
 - vii. No objection certificate from the financial institutions or banks to whom the company has defaulted;
 - viii. copy of scheme of approval by the Tribunal for the revival of the company;
 - ix. Copy of Draft agreement between the company and the proposed appointee;
 - x. Newspaper clipping of notices published under section 201
 - xi. Copy of visa or passport in case the proposed appointee is foreign national;
 - xii. Copies of education or professional qualification certificate;
 - xii. Statement as per item (iv) of 3rd proviso of Section II of Part II of Schedule V of the Companies Act, 2013
 - xiii. Statement as per item (iv) of third proviso of section II of Part II of Schedule V to the Companies Act, 2013
 - xiv. Projections of the Turnover and net profits for next three years;
 - xv. Calculation of estimated profit under section 198 of the Act;
 - xvi. An application under Section 460 of the Act for condonation of delay;
 - xvii. Full and proper justification in favour of the proposal along with bio-data of the appointee;

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- xviii. Documentary proof regarding compliance of the provisions of Section 196 of the Companies Act, 2013 at the time of appointment/ re-appointment of the proposed appointee;
- xix. Certificate by the secretary of the company or CA/CS in whole time practice to be notified erstwhile;
- xx. Details, if applicant company is a subsidiary of listed company;
- xxi. Certificate from CA/CS in whole time practice along with calculation of excess remuneration paid to the appointee;

PROCEDURE FOR REMOVAL OF MANAGING DIRECTOR/WHOLE-TIME DIRECTOR BEFORE THE EXPIRY OF HIS TERM OF OFFICE

Appointment of a Managing or Whole-time director is a contract between him and the company. Removal in breach of contract will entail payment of compensation under Section 202 of the Act. Further, the appointing authority can only remove him. Hence, he can be removed by the Board or the general meeting depending on whether the Board or the general meeting had appointed him.

There is no specific provision for the removal of the Managing/Whole-time director in the Act. If any provisions have been made in the Articles of Association, such provisions shall apply. .

If the terms and conditions of appointment or re-appointment provide for determination of the office prior to the expiry of the period by either party giving notice of three months or so to the other party, such condition shall be applicable.

All conditions applicable to removal of director are also applicable to managing director and whole – time directors.

Section 203(4) provides that if the office of any whole-time key managerial personnel is vacated, the resulting vacancy is required to be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

Appointment of CEO/CFO/Company Secretary as KMP

- The whole time Key managerial personnel (KMP) shall be appointed by means of resolution of the Board containing the terms and conditions of the appointment including the remuneration [section 203(2)];
- Whole time KMP shall not hold office in more than one company except in its subsidiary company at the same time [section 203(3)];
- Whole time KMP may be appointed a director of any company with the permission of the Board.
- As per the provisions of section 170(1), the appointment of KMP must be recorded in the 'Register of Directors and Key Managerial Personnel and their shareholding'

Vacancy of the office of any whole time KMP

Section 203(4) provides that if the office of any whole-time key managerial personnel is vacated, the resulting vacancy is required to be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

BOARD COMPOSITION

A public company shall have minimum three directors while a private company shall have minimum two directors. One Person Company shall have minimum one director. All companies may have maximum fifteen directors. However, a company may appoint more than fifteen directors after passing a special resolution. [Section 149]

MCA vide its notification dated June 05, 2015 has exempted section 8 companies from the provisions of section 149 (1) and first proviso to section 149(1). It means that the ceiling of minimum and maximum number of directors is not required in case of section 8 companies.

MCA vide its notification dated June 05, 2015 has exempted Government companies from the provisions of section 149 (1)(b) and first proviso to section 149(1).

As per Regulation 17, The composition of board of directors of the listed entity shall be as follows:

- (a) board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty per cent. of the board of directors shall comprise of non-executive directors;
- (b) where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Woman Director

Proviso to section 149(1) read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following class of companies shall appoint **at least one woman director –**

- (i) Every listed company;
- (ii) Every other public company having –
 - (a) Paid-up share capital of one hundred crore rupees or more; or
 - (b) Turnover of three hundred crore rupees or more.

Any intermittent vacancy of a woman director shall be filled –up by the board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

A Specified IFSC Public Company is exempted from appointment of woman director.

Resident Director

Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

Further, Specified IFSC public and private company is exempted from the appointment of resident director in its first financial year from the date of its incorporation.

Independent Director

Independent Director in relation to company, means a Director other than:

- A managing director; or
- Whole time director; or
- A nominee director.

Section 149(6) defines the term, 'Independent director'. It reads as under :

“(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director, –

- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
- (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

- (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (e) who, neither himself nor any of his relatives –
 - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of –
 - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
 - (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
 - (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or
- (f) who possesses such other qualifications as may be prescribed.

Further, MCA vide its notification date June 05, 2015 has exempted the provisions of section 149(6)(c) for Government companies. Also, in case of Government companies, in sub-section (6), in clause (a), for the word “Board”, the words “Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government” shall be substituted.

A Specified IFSC public company is exempted from the appointment of an Independent director. [Notification dated 4th January 2017]

Section 149(4) of the Act provides that **every listed public company** shall have **at least one-third** of the total number of directors as independent directors.

The Central Government may prescribe the minimum number of Independent Directors in case of any class or classes of **public companies**. Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following class or classes of companies shall have **at least two directors** as independent directors –

- (i) The Public Companies having paid up share capital of ten crore rupees or more; or
- (ii) The Public Companies having turnover of one hundred crore rupees or more; or
- (iii) The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

MCA has exempted section 8 companies vide notification dated June 05, 2015 and Specified IFSC public company vide notification dated 4th January 2017 from the provisions of section 149(4) to (11), 12(i) and (13). This means all the provisions relating to requirement of independent directors, definition of independent directors and other provisions shall not be applicable to section 8 companies.

Number of directorships

Section 165 prescribes number of directorship an individual can hold. A maximum limit on total number of directorship has been fixed at 20 companies including a sub-limit of 10 for public companies. i.e., a person cannot be a director of more than 10 public companies.

For the purpose of counting such directorship in public company, directorship in private companies that are either holding or subsidiary company of a public company shall be included. Alternate directorship which was earlier excluded while calculating the limit of directorship, will now be included while calculating the directorship of 20 companies.

Section 165(1) shall not apply to section 8 companies (MCA notification dated 5-6-2015)

PROCEDURE FOR APPOINTMENT OF DIRECTORS IN A COMPANY

Obtaining DIN

According to Section 165 of the Companies Act, 2013, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. The maximum number of public companies in which a person can be appointed as a director shall not exceed ten. For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

There is a need for individual identity of person(s) intending to be directors of companies to be established. This would also facilitate effective legal action against the directors of such companies under the law, keeping in view the possibility of fraud by companies under the phenomenon of companies that raise funds from the public and vanish thereafter.

Director Identification Number (DIN) is a unique identification number allotted to an existing director or a person intending to become the director of a company. In the scenario of e-filing, DIN is a pre-requisite for filing of certain company related documents. Any individual who is a director or intends to be a director of a company should apply for DIN.

Section 152(3) provides, no person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under Section 154.

Every individual intending to be appointed as director of a company shall make an application for allotment for Director Identification Number (DIN) to the Central government. (Section 153).

Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.

Rule 9 of Companies (Appointment and Qualification of Directors) Rules, 2014

Application for allotment of Director Identification Number –

- (1) Every individual, who is to be appointed as director of a company shall make an application electronically in Form **DIR-3**, to the Central Government for the allotment of a Director Identification Number (DIN) along with such fees as provided in the Companies (Registration Offices and Fees) Rules, 2014.
- (2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.
- (3) (a) The applicant shall download Form **DIR-3** from the portal, fill in the required particulars sought therein, verify and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically –
 - (i) photograph;
 - (ii) proof of identity;

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- (iii) proof of residence;
- (iv) specimen signature duly verified.
- (b) Form **DIR-3** shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by –
 - (i) a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;
or
 - (ii) a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed as director.

In case the name of the person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form DIR-3A.

A director can also obtain DIN, maximum of three directors can apply at the time of incorporation of a company, by filing Form INC-32 (SPICe).

Allotment of DIN (Rule 10) – (1) On the submission of the Form **DIR-3** on the portal and payment of the requisite amount of fees through online mode an application number shall be generated by the system automatically.

(2) After generation of the provisional DIN, the Central Government shall process the applications received for allotment of DIN under sub-rule (2) of rule 9, decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

(3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email:

Provided that the Central Government shall –

- (a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;
- (b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and
- (c) inform the applicant either by way of letter by post or electronically or in any other mode.

(4) In case of rejection or invalidation of application, the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All Director Identification Numbers allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.

(6) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

DIN shall be allotted to a maximum of three directors, in case of Form INC-32 (SPICe) filed at the time of Incorporation of a company gets approved.

Intimation of changes in particulars specified in DIN application

Rule 12 of Companies (Appointment and Qualification of Directors) Rules, 2014 –

- (1) Every individual who has been allotted a Director Identification Number under these rules shall, in the event

of any change in his particulars as stated in Form **DIR-3**, intimate such change(s) to the Central Government within a period of 30 days of such change(s) in Form **DIR-6** in the following manner, namely: –

- (i) the applicant shall download Form **DIR-6** from the portal, fill in the relevant changes, verify the form and duly scanned attach copy of the proof of the changed particulars and submitted electronically;
 - (ii) the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;
 - (iii) the applicant shall submit the Form **DIR-6**;
- (2) The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.
 - (3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form **DIR-6** to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.
 - (4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

Cancellation or Deactivation of DIN

Rule 11 of Companies (Appointment and Qualification of Directors) Rules, 2014 provides for cancellation or deactivation of DIN in certain cases. As per this Rule, the Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person seeking cancellation or deactivation of DIN, in case –

- (a) the DIN is found to be duplicate;
- (b) the DIN was obtained in a wrongful manner or by fraudulent means;
- (c) of the death of the concerned individual;
- (d) the concerned individual has been declared as lunatic by the competent Court;
- (e) if the concerned individual has been adjudicated an insolvent;

then the allotted DIN shall be cancelled or deactivated by the Central Government or Regional Director (NR), Noida or any other officer authorised by the Regional Director (NR). Before cancellation or deactivation of DIN under clause (b), an opportunity of being heard shall be given to the concerned individual.

The term “wrongful manner” means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation;

The term “fraudulent means” means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government

Surrender of DIN by DIN holder

On an application made in Form **DIR-5** by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN. Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.

Appointment of First Directors

According to Section 7(1)(c) read with Section 152(1) of the companies Act, 2013; at the time of incorporation, a

company may name some person as first directors in the articles of the company. Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

Appointment of Directors by Members at General Meeting

A person appointed as director shall not act as director unless he gives his consent to hold office of director and such consent in Form DIR - 2 has been filed with the registrar within thirty days of his appointment. The company shall within thirty days of appointment of a director, file such consent with the Registrar in form DIR-12. However, a specified IFSC public company shall file such consent in sixty days. According to Section 152, every director shall be appointed by the company in general meeting.

Separate motion should move for the appointment of each director as per section 162. A motion for approving a person for appointment or for nomination a person for appointment shall also be treated as motion for his appointment.

However, as per notification dated 4th January, 2017, section 162 is not applicable on a Specified IFSC public company.

Under section 152(6), articles of a company may provide that all directors of the company shall be retiring by rotation. Where article does not provide for retirement by rotation for all directors, not less than two – thirds of total number of directors of a public company shall be liable to be retired by rotation and be appointed by company in general meeting. At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

As per Section 152(7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless –

- i. at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
- ii. the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;
- iii. he is not qualified or is disqualified for appointment;
- iv. a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
- v. section 162 is applicable to the case

For the purposes of this section and section 160, the expression “retiring director” means a director retiring by rotation.

In case of Government companies, section 152(6) and (7) shall not apply to –

- a) a Government Companies in which the entire paid up share capital is held by the Central Government , or by any State Government or Governments or by the Central Government and one or more State Governments
- b) a subsidiary of a Government company referred to in (a) above , in which the entire paid up share capital is held by that Government company- Notification No. [F.No.1/2/2014-CL.V], dated 5-6-2015.

MCA has exempted a Specified IFSC public company vide notification dated 4th January 2017 from the provisions of section 152(6) and (7).

Procedure for re-appointment of the retiring director at the Annual General Meeting

1. Ascertain which directors are due to retire by rotation. As a general principle, the directors to retire shall be those who have been longest in office since their last appointment.
2. Ensure that the retiring director is not subject to any disqualification for re-appointment as director of the company under sections 164 and 165 of the Companies Act, 2013.
3. Ensure that the consent of the director as well as the declaration from the director has been obtained.
4. Convene a Board meeting after giving notice to all directors of the company in accordance with Section 173 of the Act, to consider the re-appointment of retiring director.
5. Fix the time, place and agenda of the annual general meeting to pass an ordinary resolution for the re-appointment of retiring director.
6. Send the notice in writing at least 21 clear days before the date of annual general meeting to the members such notice is required to be sent to the Stock Exchanges where the shares of company are listed.
7. Hold the annual general meeting and pass an ordinary resolution for re-appointment of the retiring director.
8. In case of listed companies, forward a copy of the proceedings of the annual general meeting to the stock exchanges where the company's shares are listed. [Regulation 3 of sub-regulation (4) of schedule III of SEBI (Listing Obligation and Disclosure) Regulations 2015]

Right of a Person other than requirements Retiring Directors to stand for directorship

A person other than retiring director is eligible for appointment to the office of a director at any general meeting, if he himself or some member intending to propose him as a director has not less than fourteen days before the annual general meeting left a notice in writing under his signature proposing his candidature as director with a deposit of Rs one lakh. This deposit shall be refunded to him or the member if he gets elected as director or gets more than twenty five percent of total valid votes cast either on show of hand or on poll on such resolution. [Section 160]

In case of Government Companies, section 160 shall not apply to-

- a) a Government Company in which the entire paid up share capital is held by the Central Government , or by any State Government or Governments or by the Central Government and one or more State Governments;
- b) a subsidiary of a Government company referred to in (a) above, in which the entire paid up share capital is held by that Government Company – Notification NO. [F.No. 1/2/2014-CL.V],dated 5-6-2015.

In case of Nidhis, in sub-section (1) of section 160,for the words “one lakh rupees”, the words “ten thousand rupees” shall be substituted- Notification No. [F.No.2/11/201`4-CL.V],dated 5-6-2015.

Section 160 shall not apply to Section 8 Companies whose articles provide for election of directors by ballot – Notification No. [F.No.1/2/2014-CL.I], dated 5-6-2015.

Further, Section 160 shall apply on Specified IFSC public company as per the articles framed by it. [Notification dated 4th January 2017]

Procedure for appointment of a director other than a retiring director at the Annual General Meeting

In case of a public company, the following procedure is to be adopted:

- The candidate for directorship or any member proposing other person for appointment to office of director, is required to give a notice in writing not less than fourteen days before the meeting at the office of the company, signifying candidature for the office of director or intention to propose other person as a candidate for that office, as the case may be, along with a deposit of one lakh rupees which shall be refunded to such person, or as the case may be, to such member, if the person succeeds in getting elected as a director.
- On receipt of notice, the company will inform its members of the candidature of a person for the office of director or intention of the member to propose such person as candidate for that office by serving individual notice on the members, not less than seven days before the meeting.
- Where individual notice is not practicable, publish notice not less than seven days before the meeting, in at least two newspapers (one in English and the other in regional language) circulating in the place where the registered office of the company is situated.
- In case of listed company, forward copies of this notice also to the stock exchange, where the shares of the company are listed.
- Check whether the director to be appointed in the general meeting has obtained Director Identification Number (DIN). If not then ask such person to make application to Central Government for obtaining DIN and ensure that the Director has intimated his Director Identification Number to the Company.
- Ensure that the consent of the director as well as the declaration from the director has been obtained in Form DIR – 2.
- At the general meeting, the motion to appoint a person other than the retiring director will be taken up. Where more than one such proposals are to be decided, they are to be discussed one by one and the decision of the meeting to be arrived at in respect of each proposal separately.
 - In case of listed company, send the notice and a copy of the proceedings of the general meeting to the stock exchange with which the company is listed.
 - In case the person is appointed as a director, the company shall refund the deposit of one lakh rupees to such person or to such other member, who had proposed his name for directorship.
 - The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.

Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by digitally signing it.

For the purpose of filing Form DIR – 12, the following attachments are required:

- (a) Letter of appointment
- (b) Declaration by the first director
- (c) Declaration of the appointee Director ,in Form DIR-2;
- (d) Notice of resignation;
- (e) Evidence of Cessation;
- (f) Interest in other entities;

In case of a private company, any additional requirement in its Articles of Association will also have to be followed.

- In case of listed company, particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.
- The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189.
- After appointment the director concerned has to inform other companies in which he is director about his appointment.

Appointment of Independent Director

- (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively. Independent director may be selected from Databank.
- (2) The appointment of independent director(s) of the company shall be approved by the company at the meeting of the shareholders.
- (3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management. It shall also indicate the justification for choosing the appointee for appointment as Independent Director.

In case of Government Companies for the word “Board”

- (4) The appointment of independent directors shall be formalized through a letter of appointment, which shall set out:
 - (a) The term of appointment;
 - (b) The expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
 - (c) The fiduciary duties that come with such an appointment along with accompanying liabilities;
 - (d) Provision for Directors and Officers (D and O) insurance, if any;
 - (e) The Code of Business Ethics that the company expects its directors and employees to follow;
 - (f) The list of actions that a director should not do while functioning as such in the company; and
 - (g) The remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.
- (5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.
- (6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.
- (7) He shall be hold office for a term of upto 5 consecutive years of a company. [Section 149(10)]

Re-appointment of Independent Director

The re-appointment of independent director shall be on the basis of report of performance evaluation. (Schedule IV – Code for Independent Directors)

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Section 149(11) provides that the Independent Director shall be eligible for re-appointment on passing of special resolution. He shall not hold office for more than 2 consecutive terms, but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director.

However, he shall not, during the said period of 3 years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Appointment of Independent Directors for less than 5 years

It is clarified by Ministry of Corporate Affairs on 9 June 2014 through a general Circular that section 149(10) of the Act provides for a term of 'upto 5 consecutive years' for an ID. As such while appointment of an ID for a term of less than 5 years would be permissible, appointment for any term (whether for 5 years or less) is to be treated as a one term under section 149(10) of the Act. Further, under section 149(11) of the Act, no person can hold office of ID for more than two consecutive term's such a person shall have to demit office after two consecutive terms, even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case the person completing 'consecutive terms of less than 10 years' shall be eligible for appointment only after the expiry of the requisite cooling –off period of 3 years.

APPOINTMENT OF DIRECTORS BY BOARD

(i) Appointment of Additional Directors

Articles of a company may confer on its Board of Director power to appoint Additional Director. A person who has failed to be appointed through general meeting shall not be appointed as Additional Director. An Additional Director shall hold office only up to the date of next Annual General Meeting or the last day, on which the Annual General Meeting should have been held, whichever is earlier. [Section 161(1)]

However, the total number of directors and additional directors shall not exceed the maximum strength of directors fixed for the Board.

An additional director holds office only upto the date of the next annual general meeting of the company. If the annual general meeting of the company is not held or cannot be held, the person appointed as additional director vacates his office on the last day on which the annual general meeting should have been held in terms of Section 161 of the Act.

The composition of the Board of Directors is required to be in compliance with the conditions of Regulation 17 of the listing regulations, if applicable.

If an additional director, during his tenure as additional director of the company, had been appointed as managing director of the company, his appointment as managing director also ceases simultaneously with the termination of his directorship at the commencement of the annual general meeting. However, if such a person was elected as a full fledged director at the annual general meeting he will continue to be a director of the company and also as its managing director for the period for which his appointment as managing director had been made under Section 196 of the Companies Act, 2013.

Procedure for Appointment of Additional Director

- Ensure that the Articles of the company authorise the Board to appoint an additional director and such appointment is within the maximum limit of directors mentioned in the Articles.
- Ensure that individual proposed to be appointed as an additional director, does not suffer from any disqualification mentioned .
- The Board may, if so authorised by articles otherwise, Additional Director may be appointed by passing a resolution at general meeting.

- Before appointing a person as an additional director, his consent to act as director should be obtained.
- Check whether the additional director to be appointed in the board meeting has obtained Director Identification Number (DIN). If not then ask such director to make application to Central Government for obtaining DIN and ensure that the Director has intimated his Directors Identification Number to the Company.
- Send notice in writing to all directors of the company in accordance with Section 173 of the Companies Act, 2013 for holding Board meeting.
- Hold the Board meeting and pass resolution for appointment of an additional director.
- The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.

For the purpose of filing Form DIR – 12, the following attachments are required:

- (a) Letter of appointment
 - (b) Declaration by the first director
 - (c) Declaration of the appointee Director ,in Form DIR-2;
 - (d) Notice of resignation;
 - (e) Evidence of Cessation;
 - (f) Interest in other entities;
 - The particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.
 - The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189
 - After appointment the director concerned has to inform other companies in which he is director about his appointment.
 - Precertification
- Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by digitally signing it.

(ii) Appointment of Directors to Fill Casual Vacancies

A contingency may occur between two annual general meetings due to death, resignation, insolvency, disqualification, etc. Vacancies arising out of these reasons are called casual vacancies.

Section 161(4) In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board: The person so appointed shall hold office only upto the day upto which the director in whose place he has been appointed, would have held office if he had not vacated as aforesaid. Where a person appointed by the Board vacates his office it is not a case of casual vacancy and cannot be filled by the Board in the place.

In case of a private company, the procedure for appointment will be governed by its Articles. (For specimen of Board resolution appointing director to fill casual vacancy please see *Annexure IX* to this study)

Procedure for appointing directors in casual vacancy

- Where it is proposed by the Board to appoint a person to fill a casual vacancy, his written consent to act as a director has to be obtained before appointment.
- Check whether the director to be appointed in the casual vacancy in the board meeting has obtained Director Identification Number (DIN). If not then ask such director to make application to Central Government for obtaining DIN and ensure that the Director has intimated his Directors Identification Number to the Company.
- Convene a Board meeting after giving notice to all the directors of the company as per Section 173. At the Board meeting the matter will be discussed and appointment may be made by passing a resolution.
- Ensure that the consent of the director as well as the declaration from the director has been obtained.

The company has to file particulars of director in Form DIR - 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.

- Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a CS or CA or CMA in whole-time practice by digitally signing it.
- Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by digitally signing it.

For the purpose of filing Form DIR – 12, the following attachments are required:

- (a) Letter of appointment
 - (b) Declaration by the first director
 - (c) Declaration of the appointee Director ,in Form DIR-2;
 - (d) Notice of resignation;
 - (e) Evidence of Cessation;
 - (f) Interest in other entities;
- The particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.
 - The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189
 - After appointment the director concerned has to inform other companies in which he is director about his appointment.

(iii) Appointment of Alternate Director

Section 161(2) of the Companies Act, 2013, empowers the Board of directors of a company to appoint an alternate director, if the articles authorise. Alternate director may be appointed by passing a resolution in general meeting in place of a director during his absence for not less than three months, from India. The alternate director holds office for the period the original director is permissible to hold the office and is away from India. When the original director returns, the alternate director ceases to be director. If the term of office of the original director comes to an end before he returns, the provisions of the Act relating to automatic re-appointment of retiring directors in default of another appointment will apply to the original director and not to the alternate one. Thus, the original and not the alternate director will be deemed to be reappointed.

Only a person qualified to be an independent director shall be appointed as an alternate director for an independent director.

Procedure for appointment of an alternate Director

- Consult the Articles of Association of the company to see whether they authorize the Board to appoint an alternate director. Otherwise, either alter them accordingly or pass a resolution in company's general meeting authorizing the Board to make such appointment
- Where it is proposed to appoint a person as an alternate director his written consent to act as director shall be obtained.
- Check whether alternate director to be appointed in board meeting has obtained Director Identification Number (DIN). If not then ask such director to make application to Central Government for obtaining DIN and ensure that the Director has intimated his Directors Identification Number to the Company.
- Convene a Board meeting after giving notice to all the directors as per section 173. The Board may approve the appointment by passing a resolution either at a Board meeting or by circulation.
- Ensure that the consent of the director as well as the declaration from the director has been obtained.
- The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.
- Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a CS or CA or CMA in whole-time practice by digitally signing it.
- The said alternate director will not hold office as such for a period longer than that permissible for the original director in whose place he has been appointed and shall vacate office if and when the original director returns to India in which the Board meetings are ordinarily held. The alternate director holds office for the period the original director is permissible to hold the office.
- Where the alternate director vacates his office as per the section, the Board may reappoint him as an alternate director when the original director leaves the State concerned.
- The particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.
- The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189
- After appointment the director concerned has to inform other companies in which he is director about his appointment. [Section 165]

For the purpose of filing Form DIR – 12, the following attachments are required:

- (a) Letter of appointment
- (b) Declaration by the first director
- (c) Declaration of the appointee Director ,in Form DIR-2;
- (d) Notice of resignation;
- (e) Evidence of Cessation;
- (f) Interest in other entities;

Appointment of Directors by Tribunal

While giving order on an application made under section 241, i.e., for relief in cases of oppression the Tribunal may provide order for appointment of such numbers of persons as directors of the company and ask them to report to the Tribunal on matters as the Tribunal may direct. [Section 242(2)(k)]

The directors, so appointed, may or may not be the members of the company. For the purpose of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Tribunal shall not be taken into account. Such director or directors shall not be liable to determination by retirement of directors by rotation. But they can be removed by the Tribunal at any time and other persons can be appointed by it in their place. Where the directors have been appointed by the Tribunal, it may also issue such directions to the company, as it may consider necessary or appropriate in regard to their affairs.

Appointment of Director by System of Proportional Representation

According to section 163 the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

In case of Government Companies, section 163 shall not apply to –

- (a) a Government Companies in which the entire paid up share capital is held by the Central Government , or by any State Government or Governments or by the Central Government and one or more state Governments;
- (b) a subsidiary of a Government Company, referred to in (a) above , in which the entire paid up share capital is held by that Government company – Notification No. [F. No.1/2/2014- CL.V],dated 5-6-2015.

Appointment of Nominee Directors

Explanation to Section 149(7) defines, “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests. Nominee Director shall not be deemed to be independent director as per Section 149(6). [Section 149(7) is not applicable to a Specified IFSC public company as per notification dated 4th January 2017]

Companies, which secure financial assistance from financial institutions, banks, major shareholders, debenture holders, etc. usually confer on their lenders, power to appoint and terminate the appointments of their nominees on their Boards. Such power is conferred by incorporating appropriate provisions in the financial assistance agreements.

These institutions/banks etc. also insist on borrowing companies to alter their articles of association so as to empower them to appoint and terminate the services of their nominee directors on the Board of the company as and when they like. These directors are known as nominee directors. They are not liable to retire by rotation and hold office at the pleasure of their nominating agencies. They cannot be removed by the company.

Procedure to appoint a nominee director is same as appointment as additional director by the Board or appointment of director other than retiring director by the company in general meeting. Depending upon the term and condition of agreement with the appointing bank/institution/Government, the company may choose any of these two methods.

Procedure for Appointment of Director to be Elected by Small Shareholders

A listed company may have one director elected by small shareholders. Small shareholders means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum prescribed. [Section 151]

Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014

1. A listed company having a paid-up capital of five crore rupees or more and having one thousand or more

small shareholders (holding shares of nominal value of Rs. 20,000 or less may have a director elected by such small shareholders.

2. small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

If the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice

3. The notice shall be accompanied by statement of proposed director stating his DIN, that he is not disqualified and his consent to act as director of the company.
4. Such director shall be considered as an independent director subject to being eligible and giving a declaration of his independence in accordance with sub-section (6) and (7) of section 149 of the Act.
5. The small shareholder director shall be elected through postal ballot.
6. Ensure that the proposed director shall not hold the position of small shareholder director in more than 2 companies at the sametime. Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.
7. Such director shall not be retire by rotation and shall have tenure of continuous three years.
8. After completion of tenure small shareholders director shall not be eligible for reappoint.
9. When small shareholders directors cease to be a small shareholder, he cease to be a small shareholders director.
10. The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.
11. Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by digitally signing it.
12. For the purpose of filing Form DIR – 12, the following attachments are required:
 - (a) Letter of appointment
 - (b) Declaration by the first director
 - (c) Declaration of the appointee Director ,in Form DIR-2;
 - (d) Notice of resignation;
 - (e) Evidence of Cessation;
 - (f) Interest in other entities;
13. In case of listed company, the particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.
14. The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189
15. After appointment the director concerned has to inform other companies in which he is director about his appointment.

Disqualifications for Appointment of Director

Section 164(1) Provides that a person shall not be eligible for appointment as a director of a company, if –

- (a) He is of unsound mind and stands so declared by a competent court;
- (b) He is an undischarged insolvent;
- (c) He has applied to be adjudicated as an insolvent and his application is pending;
- (d) He has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company.

- (e) An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- (f) He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- (g) He has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
- (h) He has not complied with sub-section (3) of section 152.

Section 164(2) also provides that no person who is or has been a director of a company which –

- (a) Has not filed financial statements or annual returns for any continuous period of three financial years; or
- (b) 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 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.

In case of Government Companies , section 164(2) shall not apply – Notification No. [F.No. 1/2/2014- CL.V],dated 5-06-2015.

Every director shall inform to the company concerned about his disqualification under sub-section (2) of section 164, if any, in Form **DIR-8** before he is appointed or re-appointed.

Whenever a company fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as specified in sub-section (2) of section 164, the company shall immediately file Form **DIR-9**, to the Registrar furnishing therein the names and addresses of all the directors of the company during the relevant financial years.

When a company fails to file the Form **DIR-9** within a period of thirty days of the failure that would attract the disqualification under sub-section (2) of section 164, officers of the company specified in clause (60) of section 2 of the Act shall be the officers in default.

Upon receipt of the Form **DIR-9** under sub-rule (2), the Registrar shall immediately register the document and place it in the document file for public inspection. Any application for removal of disqualification of directors shall be made in Form **DIR-10**.

However, a private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).

The disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect –

- (i) For thirty days from the date of conviction or order of disqualification.
- (ii) Where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or
- (iii) Where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off.

REMOVAL OF DIRECTORS

Removal of Director by Shareholders

According to Section 169, a company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard. The provision relating to removal shall not apply where the company has availed itself of the option to appoint not less than two – thirds of the total number of directors according to the principle of proportional representation.

Procedure for Removal of Director

The following procedure is required to be adopted for removal of a director:

1. A special notice from a member of the company proposing an ordinary resolution for removing the director is necessary.
2. Send forthwith a copy of the special notice to the director proposed to be removed.
3. Decide to call a general meeting through the Board resolution.
4. Issue notice of the general meeting in writing at least twenty-one clear days before the date of the meeting informing about the special notice and proposing the ordinary resolution for removal.
5. In the notice of the meeting, state the facts of the representation made by the director concerned and also send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after the receipt of the representations by the company).
6. If the representation is received too late and it could not be sent to the members, the director concerned may require that the representation shall be read out at the meeting. The director concerned has also the right of being heard at the meeting.
7. However, the National Company Law Tribunal on an application of the company or any other person who claims to be aggrieved, on having satisfied, may dispense with the procedure of sending a copy of representation and reading thereof at the meeting if it is being used to secure needless publicity for defamatory matter.
8. In case of listed company, send notice of the general meeting to the stock exchange(s) within 24 hours of the occurrence of the event where the company is listed [Refer regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].
9. Hold the general meeting and pass the proposed resolution by ordinary resolution.
10. In case of listed company, forward a copy of the proceedings of the meeting within 24 hours of the occurrence of the event to the stock exchange(s) where the company is listed.
11. Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by _____ digitally _____ signing _____ it.

12. The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the removal after paying the requisite fee electronically.

For the purpose of filing Form DIR – 12, the following attachments are required:

- (a) Letter of appointment
 - (b) Declaration by the first director
 - (c) Declaration of the appointee Director ,in Form DIR-2;
 - (d) Notice of resignation;
 - (e) Evidence of Cessation;
 - (f) Interest in other entities;
13. The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189.
11. After appointment the director concerned has to inform other companies in which he is director about his appointment.
12. Give a general public notice in newspaper regarding removal of the director if it is so warranted for the protection of the company and benefit of the general public.

Removal of Director by the National Company Law Tribunal

Where an application has been made to the National Company Law Tribunal under Section 241 of the Companies Act 2013 for prevention of oppression or mismanagement and the Tribunal has conducted its proceedings on the application, it has the power under Section 242(2)(h) of the Act, to remove any director.

VACATION OF OFFICE BY A DIRECTOR

According to Section 167 of the Companies Act, 2013, the office of a director shall become vacant in case –

- (a) he incurs any of the disqualifications specified in section 164;
- (b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
- (c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- (d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
- (e) he becomes disqualified by an order of a court or the Tribunal;
- (f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months. The office shall be vacated by the director even if he has filed an appeal against the order of such court;
- (g) he is removed in pursuance of the provisions of this Act;
- (h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

A private company, which is not a subsidiary of a public company, may, by its articles, provide additional grounds for vacation of office of director.

On vacation of office of director, the company is required to file Form DIR – 12 to the Registrar of Companies.

If the office held by any director has become vacant on the ground of disqualification provided above and the concerned director continues to function, 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.

Resignation of Directors

According to section 168 –

1. A director may resign from its office by giving a notice with the reasons of resignation in writing to the company
2. The Board shall on receipt of such a notice from a director shall take note of the same.
3. 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 as provided in **Rule 15 of the companies (Appointment and Qualification of Directors) Rules, 2014**.
4. The board shall place the facts of such resignation by the director in the Report of Directors laid in immediately following general meeting by the company.
5. The Director shall within 30 days from his resignation, forward to the registrar a copy of his resignation along with reasons for resignation with reasons provided therein in Form DIR-11 along with the fee provided. In case of Specified IFSC public and private company, a director may file Form DIR-11 to the Registrar.
6. The resignation shall be effective from the date on which the notice is received by the company or the date specified by the Director in the notice whichever is later.
7. When all the Directors resign at the same time under section 167, in such case the required number of directors are to be appointed by the promoter or, the Central Government. The Directors so appointed shall hold office till the Directors are appointed by the company in general meeting.

LOANS TO DIRECTORS

According to section 185(1) save as otherwise provided in the act, no company shall directly or indirectly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

The above provisions shall not apply in the following cases:

- (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 bank rate declared by the Reserve Bank of India.
- (c) any loan made by a holding company to its wholly subsidiary company or any guarantee given or any 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;

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

Explanation : For the purposes of this section, the expression “to any other person in whom director is interested” means –

- (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
- (b) any firm in which any such director or relative is a partner;
- (c) any private company of which any such director is a director or member;
- (d) any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
- (e) 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.

In case of Specified IFSC public and private company, for point (c), the expression “to any other person in whom director is interested” shall mean any private company of which any such director is a director or member in which director of the lending company do not have direct or indirect shareholding through themselves or through their relatives and a special resolution is passed to this effect. [Notification Dated 4th January, 2017]

The Companies (Meeting of Boards and its Power) Rules, 2014, also prescribe various provisions related to loan to directors.

Exemptions for applicability of section 185

Section 185 shall not apply to Private Company subject to the following conditions:

- (a) In whose share capital no other body corporate has invested any money
- (b) If the borrowings of such company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower and
- (c) Such a company has not defaulted in repayment of such borrowings subsisting at the time of making transactions under this section.

Section 185 shall not apply to Nidhi Company if the loan is given to a director or his relative in their capacity as member and such transaction is disclosed in the annual accounts by a note.

Section 185 shall not apply to Government Company in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section.

DISCLOSURES BY A DIRECTOR OF HIS INTEREST

Section 184 (1) states that 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 such manner as may be prescribed.

Rule 9 of Companies (Meetings of Board and its Powers) Rules, 2014

(1) Every director shall disclose 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.

(2) 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.

(3) All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

Directors interest in a contract or arrangement [Section 184(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.

In case of private companies, section 184(2) shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest (MCA notification dated 5th June 2015)

Further, in case of section 8 companies, Section 184(2) shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of contract or arrangement exceeds one lakh rupees.

Also, in case of Specified IFSC Public Company, Section 184(2) shall apply with the exception that interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting. [MCA Notification Dated 4th January 2017]

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. [Section 184(3)]

Contravention of section 184(1) and 184(2)

According to section 184(4) if a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director 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 one lakh rupees, or with both.

According to section 184(5) section 184 shall not –

- (a) 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) apply to any contract or arrangement entered into or to be entered into between two companies where any

of the directors of the one company 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.

RELATED PARTY TRANSACTIONS

INTRODUCTION

Related party transactions can be legitimate and value-enhancing for a corporation, but they can also serve as a vehicle for illegitimate expropriation of corporate value by management or controlling shareholders. Under certain conditions, the transactions can allow controlling shareholders or executives of a company to benefit personally at the expense of non-controlling shareholders of the company.

Abuses of related party transactions have been linked to negative consequences to minority investors in Companies, and may play a key role in corporate fraud.

In this write up, we will explain how the Regulator (the Ministry of Corporate Affairs) has provided for proper checks and controls by way of approvals, disclosures and documentations under the Companies Act, 2013 and Listing Regulations.

DEFINITIONS

(a) Related Party

According to Section 2(76) of the Companies Act, 2013, “related party”, with reference to a company, means –

- (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 is 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) any body 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 company which is –
 - (A) a holding, subsidiary or an associate company of such company; or
 - (B) a subsidiary of a holding company to which it is also a subsidiary;
- (ix) such other person as may be prescribed;

Rule 3 of Companies (Specification of Definitions Details) Rules, 2014 provides that for the purpose of Section 2(76)(ix), a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company shall be deemed to be a related party.

In case of Private companies, section 2(76) (viii) shall not apply with respect to section 188 (MCA notification dated June 05, 2015)

In case of Specified IFSC Public Company, section 2(76)(viii) shall not apply with respect to section 188 (MCA Notification Dated 5th January, 2017).

(b) Relative

According to Section 2(77) of the Companies Act, 2013, the term, “relative”, with reference to any person, means anyone who is related to another, if –

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed.

Rule 4 of Companies (Specification of Definitions Details) Rules, 2014 provides that 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:
Provided that the term “Father” includes step-father.
- (2) Mother:
Provided that the term “Mother” includes the step-mother.
- (3) Son:
Provided that the term “Son” includes the step-son.
- (4) Son’s wife.
- (5) Daughter.
- (6) Daughter’s husband.
- (7) Brother:
Provided that the term “Brother” includes the step-brother;
- (8) Sister:
Provided that the term “Sister” includes the step-sister.

DEFINITIONS UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

Related Party

As per regulation 2(1)(zb) “related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:

Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);

Related Party Transaction

As per regulation 2(1)(zc) “related party transaction” means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract:

Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);

Relative

As per regulation 2(1)(zd) “relative” means relative as defined under sub-section (77) of section 2 of the Companies Act, 2013 and rules prescribed there under:

Provided this definition shall not be applicable for the units issued by mutual fund which are listed on a recognised stock exchange(s);

APPROVALS UNDER COMPANIES ACT, 2013

Approval by Audit Committee

As per section 177(1), the Board of directors of every listed company and the following prescribed companies are required to constitute Audit Committee:

- (i) all public companies with a paid up capital of ten crore rupees or more;
- (ii) all public companies having turnover of one hundred crore rupees or more;
- (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Section 177(4) (iv) provides that every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall *inter alia*, include approval or any subsequent modification of transactions of the company with related parties.

The following proviso is inserted by the Companies (Amendment) Act, 2015 :

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

Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions :

- (1) The Audit Committee to specify the criteria (after obtaining approval of the Board) for making the omnibus approval which shall include the following, namely :
 - (a) maximum value of the truncations, in aggregate, which can be allowed under the omnibus route in a year;
 - (b) the maximum value per transaction which can be allowed;
 - (c) extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;
 - (d) 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).
- (2) The Audit Committee to consider the following factors while specifying the criteria for making omnibus approval namely :
 - (a) repetitiveness of the transactions (in past or in future);
 - (b) justification for the need of omnibus approval.
- (3) 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.
- (4) Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.

Approval by Board of Directors

As per Section 188 of the Companies Act, 2013, no company shall enter into any contract or arrangement with a related party without obtaining the consent of the Board of Directors of the company given by a resolution at a meeting of the Board with respect to the following:

- (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 derivatives thereof, of the company.

Conditions required to be complied with

As per Rule 15 of the Companies (Meetings of Board and its powers) Rules, 2014, the agenda of the Board meeting at which the resolution is proposed to be moved shall disclose-

- i. the name of the related party and nature of relationship;
- ii. the nature, duration of the contract and particulars of the contract or arrangement;
- iii. the material terms of the contract or arrangement including the value, if any;
- iv. any advance paid or received for the contract or arrangement, if any;
- v. the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
- vi. whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
- vii. any other information relevant or important for the Board to take a decision on the proposed transaction

Also, any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or Arrangement.

Approval by Members at a General Meeting

As per first proviso of Section 188 (1) of the Companies Act, 2013, prior approval of the company by a Resolution is required in case, the contract or arrangement with related parties exceeds the prescribed amounts.

Also, the following Government companies are exempted from applicability of first proviso to section 188 (1) of the Companies Act, 2013:

- (a) a Government company in respect of contract or arrangements entered into by it with any other Government Company;
- (b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.

Rule 15(3) of the Companies (Meetings of Board and Its powers) Rules, 2014 provides the limits as follows:

- (a) sale, purchase or supply of any goods or materials;
 - sale, purchase or supply of any goods or materials, directly or through appointment of agent, amounting to ten per cent or more of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
- (b) selling or otherwise disposing of, or buying, property of any kind;
 - selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten per cent or more of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
- (c) leasing of property of any kind;

leasing of property of any kind amounting to ten per cent or more of the net worth of the company or ten per cent or more of turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;

(d) availing or rendering of any services;

availing or rendering of any services, directly or through appointment of agent, amounting to ten per cent or more of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

Note: the limits specified above (a to d) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

(e) appointment of Related party to any office or place of profit in the company, its subsidiary company or associate company

Approval of the members of the company shall be required 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 by a resolution.

As per explanation (a) to section 188(1), the expression "office or place of profit" means any office or place-

(i) 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;

(ii) 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;

(f) underwriting the subscription of any securities or derivatives of the company:

Remuneration paid for underwriting the subscription of any securities or derivatives thereof of the company exceeding one per cent of the net worth of the company.

Note:

- (1) 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;
- (2) In case of a wholly owned subsidiary, the resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company;
- (3) The requirement of passing the resolution by the members shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval;
- (4) Section 188(1) shall not apply to a Specified IFSC public company.

Explanatory Statement to be given in the Notice of the General Meeting

An explanatory statement shall 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.

OTHER IMPORTANT ASPECTS

Related Party to Abstain from voting

As per Second proviso to section 188 (1) of the Companies Act, 2013, no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

In case of Private Company, exemption has been given to the private company from applicability of second proviso to section 188(1), who is also a related party, to vote on such resolution at the general meeting. (*vide MCA notification dated 05.06.2015*)

Also, the following Government companies are exempted from applicability of second proviso to section 188 (1) of the Companies Act, 2013:

- (c) a Government company in respect of contract or arrangements entered into by it with any other Government Company;
- (d) 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.

Exemptions to transactions which are on an Arm's Length basis

As per third proviso of 188 (1) of the Companies Act, 2013, any transactions entered into by the company in its ordinary course of business and on an arm's length basis.

Explanation (b) to section 188(1) defines the expression "arm's length transaction" to mean a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

Disclosure in the Board's report

As per section 188(2) of the Companies Act, 2013, a justification for entering into such contract or arrangement shall be given to the shareholders in the board's Report for every contract or arrangement entered into with related parties.

Disclosure shall be made in Form AOC-2 giving particulars of contracts/arrangements entered into by the company with related parties

Disclosures shall also be made on materially significant related party transactions that may have potential conflict with the interests of company at large

Section 134(3)(h) provides that a report by its Board of Directors to include particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form.

Related Party Transactions entered without Approval of the board Meeting and General Meeting

As per section 188 (3) of the Companies Act, 2013, a company may enter in to contract or arrangement through its director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting which shall be ratified by the Board or by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into,

Further, such contract or arrangement shall be voidable at the option of the Board 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.

Proceeding on contravention against director or any other employee

As per Section 188(4) of the Companies Act, 2013 that 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

Involvement in offence dealing with related party transactions- a criteria for disqualification for appointment of directors

Section 164 (1) (g) provides that a person shall not be eligible for appointment as a director of a company, if he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years.

Clarification relating to Corporate Restructuring

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, 1956/Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.

RELATED PARTY TRANSACTIONS UNDER SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

REGULATION 23 ON RELATED PARTY TRANSACTIONS

Regulation 23 on "Related Party Transactions" provides as under:

- (1) Every listed company shall formulate a policy on materiality of related party transactions and on dealing with related party transactions:

Explanation.- A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

- (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 subject to the following conditions, namely-
 - (a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;
 - (b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
 - (c) the omnibus approval shall specify:
 - (i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,
 - (ii) the indicative base price / current contracted price and the formula for variation in the price if any; and
 - (iii) such other conditions as the audit committee may deem fit:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

- (d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.

- (e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:
- (4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting 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:
- (a) transactions entered into between two government companies;
 - (b) 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.
- Explanation-* For the purpose of clause (a), “government company(ies)” means Government Company as defined in sub-section (45) of section 2 of the Companies Act, 2013.
- (6) The provisions of this regulation shall be applicable to all prospective transactions.
- (7) For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.
- (8) All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.

ROLE OF AUDIT COMMITTEE

Part C on Role of the Audit Committee and review of information by Audit Committee includes approval or any subsequent modification of transactions of the listed entity with related parties.

DISCLOSURES UNDER LISTING REGULATIONS

Quarterly Compliance Report on Corporate Governance

Regulation 27 requires all the details of all material transactions with related parties shall be disclosed along with the report mentioned in clause (a) of sub-regulation (2).

Regulation 27(2) (a) requires 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 recognised stock exchange(s) within fifteen days from close of the quarter.

Regulation 46(2)(g) requires the listed entity to disseminate the policy on dealing with related party transactions on its website.

Disclosure in Annual Report

Regulation 53 (f) requires that the annual report of the listed entity shall contain disclosures as specified in Companies Act, 2013 along with related party disclosures as specified in Para A of Schedule V.

Schedule V, Annual Report provides that the annual report shall contain the following additional disclosures:

A. Related Party Disclosure:

1. The listed entity shall make disclosures in compliance with the Accounting Standard on “Related Party Disclosures”.
2. The disclosure requirements shall be as follows:

<i>Sr. No.</i>	<i>In the accounts of</i>	<i>Disclosures of amounts at the year end and the maximum amount of loans/ advances/ Investments outstanding during the year</i>
1	Holding Company	<ul style="list-style-type: none"> – Loans and advances in the nature of loans to subsidiaries by name and amount. – Loans and advances in the nature of loans to associates by name and amount. – Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount.
2	Subsidiary	Same disclosures as applicable to the parent company in the accounts of subsidiary company
3	Holding Company	Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.

For the purpose of above disclosures directors' interest shall have the same meaning as given in Section 184 of Companies Act, 2013.

3. The above disclosures shall be applicable to all listed entities except for listed banks.

REGISTER OF CONTRACTS OR ARRANGEMENT IN WHICH DIRECTORS ARE INTERESTED

Section 189 provides that every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies and enters therein the particulars as specified in Rule 16 of Companies (Meetings of Board and its Powers) Rules, 2014. After entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting. Such registers shall be maintained in Form MBP4.

Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.

The register referred above shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.

The register to be kept under this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

Nothing contained in this section shall apply to any contract or arrangement –

- (a) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or
- (b) By a banking company for the collection of bills in the ordinary course of its business.

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.

In case of section 8 companies, section 189 shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees. [MCA notification dated 5-6-2015]

CONTRACT OF EMPLOYMENT WITH MANAGING OR WHOLE TIME DIRECTORS

Section 190(1) provides that 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.

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.[Section 190(2)]

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. 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) Provides that 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.

For making any payment by a director of a company by way of compensation in connection with any event mentioned in sub-section (1) of section 191, the approval of members by way of resolution approving the payment of amount is required. (Rule 17 of Companies Meetings of board and its powers) Rules, 2014

The following particulars are required to be disclosed to the members of the company:

- (a) name of the director;
- (b) amount proposed to be paid;
- (c) event due to which compensation become payable;
- (d) date of Board meeting recommending such payment;
- (e) basis for the amount determined;
- (f) reason or justification for the payment;

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- (g) manner of payment - whether payable in cash or otherwise and how;
- (h) sources of payment; and
- (i) any other relevant particulars as the Board may think fit.

In the following cases, payment shall not 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:

- (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, payable to the Central Government or any State Government, statutory authority or local authority (other than in cases where the company has disputed the liability to pay such dues);
- (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.

It may be noted that pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. will be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of ten years.

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. [Section 191(2).

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. 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.

The restriction on non-cash transactions involving directors

Section 192(1) provides that 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.

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.[Section 192(2)]

However, 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.

Prohibition on forward dealing in securities of company by director or key managerial personnel

Section 194(1) provides that no director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company –

- (a) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or
- (b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

If a director or any key managerial personnel of the company contravenes the provisions of sub-section (1), such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

COMPENSATION FOR LOSS OF OFFICE OF DIRECTOR AND OTHER MANAGERIAL PERSONNEL

A Company may make payment to a Managing Director or a Director holding the office of Manager or in the whole-time employment 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 in accordance with Section 202 of the Companies Act other than the following circumstances –

- (a) where director resign from his office as a result of the reconstruction or amalgamation and appointed in a position in the reconstructed company or resulting company;
- (b) where the director resign from his office;
- (c) where the office of director is vacated under Section 167 (1) vacation of office;
- (d) where the company is being wound up, provided the winding up was due to the negligence or default of the director;
- (e) where the director has guilty of fraud or breach of trust in relation to or gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and
- (f) where the director has instigated or has taken part directly or indirectly in bring about the termination of his office.

Any payment of compensation shall not exceed the remuneration for remaining period of his term or for three years,

whichever is shorter calculated on average actual remuneration for last three years. Where he held the office for a lesser period than three years, than calculation shall be made on that period.

This section does not prohibit payment of any remuneration for services rendered by him to the company in any other capacity.

Procedure for payment of Compensation for Loss of Office of Director and other Managerial Personnel

- Ensure that the payment of compensation paid is for loss of office to a Managing Director/Whole-time Director or Managers
- Ensure that no compensation is paid for loss of office is paid to a Managing Director/Whole-time Director or to a Director who is a Manager as envisaged in Section 202(2) of the Companies Act
- Payments made to a Managing Director/Whole-time Director or to Director who are Managers should be subject to the limits specified in Section 202(3) of the Companies Act
- Ensure that the name of the Director is mentioned in the Register of Directors
- Ensure that there is agreement(s) with the Director concerned for payment of compensation for loss of office in accordance with the provisions of Section 202 (3)
- Check the Minutes of the Board and the General Meeting authorizing payment of compensation for loss of office to a Director or other managerial personnel

POWERS OF BOARD

Section 179 empowers the board to exercise its powers in all areas of the Act, except where it is specifically mentioned in the Act or in the memorandum or articles that the power shall be exercised at a general meeting by the shareholders.

The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely: –

- (a) to make calls on shareholders in respect of money unpaid on their shares;
- (b) to authorise 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:

In case of section 8 companies matters referred to in clause (d), (e) and (f) may be decided by Board by circulation instead of at a meeting (MCA Notification dated 5-6-2015)

Provided that the Board may, 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, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.

Provided also that in case of a Specified IFSC public and private company, the Board can exercise powers by means of resolutions passed at the meetings of the Board or through resolutions passed by circulation.

Explanation I : Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

Explanation II : In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

Restriction on Powers of Board

According to section 180(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.

Explanation : For the purposes of this clause, –

- (i) “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 20% of the total income of the company during the previous financial year;
- (ii) the expression “substantially the whole of the undertaking” in any financial year shall mean 20% or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

According to section 180(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.
- (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, apart from temporary loans obtained from the company’s bankers in the ordinary course of business:

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or

otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

Explanation : For the purposes of this clause, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

(d) to remit, or give time for the repayment of, any debt due from a director.

Section 180(2) contains provisions on limits on borrowing the section provides that 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.

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 authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.[Section 180(4)]

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. [section 180(5)]

In case of private companies, Section 180 shall not apply vide MCA notification dated 5th June 2015. Further in case of a Specified IFSC public company, Section 180 shall apply unless the articles of the company provides otherwise vide MCA notification dated 4th January, 2017.

Duties of Directors (Section 166)

- (1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.
- (2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- (3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- (4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- (5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- (6) A director of a company shall not assign his office and any assignment so made shall be void.
- (7) 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

Contribution of Bona Fide Charitable and other Funds

According to section 181, the Board of Directors of a company may contribute to bona fide charitable and other funds:

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.

Prohibition and Restrictions Regarding Political Contribution

According to section 182(1) the following companies are barred from making political contributions

- Government company
- The company which has been in existence for less than 3 financial years,

The aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years:

For making such contribution, a resolution authorising the making of such contribution is required to be passed at a meeting of the Board of Directors.

Such resolution shall be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

Contributions for Political Purpose

Section 182(2) provides that without prejudice to the generality of the provisions of section 180(1)

- (a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;
- (b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed, –
 - (i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
 - (ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

Political Contribution to be Disclosed in Profit and Loss Account

Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

Punishment for Contravention of Section 182

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. [Section 182(4)]

Explanation : For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951.

Contribution to National Defence Fund

Section 183(1) states that the Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount relates. [Section 183(2)]

DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Directors' and Officers' Liability Insurance provides financial protection for the Directors and Officers of the Company in the event they are sued in conjunction with the performance of their duties as they relate to the Company. Directors' and Officers' Insurance can also be treated as management Errors and Omissions Policy. Directors' and Officers' Liability Insurance can usually include Employment Practices Liability and sometimes Fiduciary Liability. The Company needs Directors' and Officers' Liability insurance when the Company assembles a Board of Directors. Investors, especially Venture Capitalists, will also require that evidence be shown that Directors and Officers liability insurance as part of the conditions for funding the Company. Directors and Officers Insurance is needed because claims from stockholders, employees and clients may be made against the Company and against the Directors of a Company. Since a Director can be held personally responsible for acts of the Company, most Directors and officers will demand that they be protected rather than put their personal assets at stake.

What is D & O Liability Insurance

D & O policy is designed to protect the personal fortune of Directors and officers of a company (public or private) against the consequences of their personal liability for financial losses arising out of wrongful acts and or omissions done, or wrongfully attempted in their' capacity as Directors or officers.

Wrongful act is defined as any actual or alleged error, omission, misstatement, misleading statement, neglect, breach of duty or negligent act by any of the Directors or officers, solely in their capacity as Directors or officers of the company.

Directors' and Officers' Liability coverage comprises two sections: (a) Damages awarded against Directors and officers including legal cost, (b) Company reimbursement.

The Directors' and Officers' section indemnifies the Directors and officers in respect of claims made against them where the company is not legally permitted to reimburse them. (In the absence of D&O insurance cover, Directors and officers would have to pay the loss settlement and defense costs out of their own resources).

The company reimbursement section indemnifies the company in respect of claims made against the Directors and officers of the company where it (the company) may reimburse the Directors and officers in accordance with the Articles of Association.

According to Section 197(13), premium paid for a insurance on indemnifying them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust shall not be included to the remuneration of any key managerial personnel. However, if such person found guilty, such premium shall be treated as part of their remuneration.

Who is Covered

D&O policy also covers former, present and future members of the board of Directors and the management. Cover

will also apply to the above individuals of the parent company, the subsidiary companies and subsidiary companies newly acquired or incorporated during the policy period. (Outside Directors, public representatives or shadow Directors may also require cover). The company's auditor is generally not considered as an officer of the company so special mention is to be made to include him/her in the D&O policy.

Essentially, personal liability claim may arise under contract in tort and by statute. Directors can be personally liable for their own default as well as jointly and severally with the company and their fellow Directors for its or their negligence or omission.

Insurance Cover:

The policy will normally indemnify in respect of damages awarded against Directors or officers and the company reimbursement of the insured companies in case of a valid contractual obligation on their part to hold a director or officer harmless. Defence costs are also normally covered.

What is not Covered/What Are the Main Exclusions:

- Criminal behavior,
- Libel, slander or other defamation,
- Fraudulent acts of an insured,
- Professional liability (cover under a professional liability policy),
- Environmental damage or pollution,
- Bodily injury or property damage (cover all under a general liability or property program),
- Fines, penalties and other penal liability.

Is the Policy on a "Claims Made" or an "Occurrence Basis":

The policy is on 'claims made basis' similar to product liability insurance. This will of course allow only claims made during the period of if such claims may be as a result of wrongful acts committed prior to the inception of the policy and would be covered so long as such acts were not thought to give rise to a claim.

An onerous declaration is required to protect insurers against providing cover for known circumstances. Clearly, current litigation would not be insured. Retroactive dates are sometimes imposed if there is good reason, which would mean that only acts committed after the inception of the policy which give rise to a claim would be covered.

Indian Scenario

The exposure to D&O claims in India is very akin to that of the United Kingdom. The main difference between the two countries from a D&O point of view is purely awareness. Once the awareness is created, the plaintiffs are more likely to press for some recourse and therefore the Directors will need protection.

Recent Development in Asia Affecting D&O

Asia as a whole is becoming an attractive source of new income for the insurance market (in respect of D&O). The companies that have the most concerns regarding D&O suits are those companies with operations in the USA. Particularly, the companies those are listed in the USA or have ADRs (American Depository Receipts) are exposed to the regulations of the SEC (Securities Exchange Commission).

FILING OF AGREEMENTS WITH MANAGERIAL PERSONNEL

Section II of Part II of Schedule V provides for disclosure of service contracts, notice period, severance fees. Every company shall keep a copy of contract of service with managing or whole – time director in writing. Where the

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contract is not in writing, a written memorandum setting out terms of contract shall be kept. The copies of the contract or the memorandum shall be open to inspection by any member of the company without payment of fee.

This section is not applicable to private company.

It is common, and desirable, to enter into an agreement with a managing director setting out terms and conditions of employment, remuneration, term, termination. As to the relationship between a company and the managing director, there may be a formal contract between a managing director and the company, evidencing the contractual relationship between the two.

However, in the absence of a formal agreement the relationship may be established by an implied contract. Where a managing director is appointed, and acts as such, in accordance with the company's articles, and no separate formal contract is entered into, the existence of an implied contract may be inferred, although the articles do not constitute a contract between the company and the managing director qua managing director.

An implied contract on the terms of the company's articles, which included a provision regarding managing director, was held to have been proved in absence of a formal express contract. The court observed: "A contract may be either express or implied. An express contract can be proved by written or spoken words which constitute an agreement between the parties and an implied contract, on the other hand, may be proved by circumstantial evidence of an agreement. A contract may also be of a mixed character, that is, partly expressed in words and partly implied from acts of the parties and circumstances." However, it is desirable to have a formal express written agreement.

Powers delegated to managing director by power of attorney

It is common to delegate to the managing director powers of management by a power of attorney approved by the Board and duly authenticated by a notary public. A specimen power of attorney is given at *Annexure* at the end of the study.

ANNEXURES

SPECIMEN RESOLUTION AUTHORISING A DIRECTOR TO DISCHARGE CERTAIN RESPONSIBILITIES ON BEHALF OF THE BOARD

“RESOLVED THAT Shri A, Director, be and is hereby authorised to sign and execute counter guarantees in favour of the State Bank of India on behalf of the company whenever the company has to get guarantees issued by the said Bank for the purpose of giving quotations against the tenders floated by the agencies of Central or State Government and any other company.”

SPECIMEN RESOLUTION FOR APPOINTMENT OF DIRECTOR LIABLE TO RETIRE BY ROTATION

“RESOLVED THAT Shri A, whose period of office is liable to determination by retirement of directors by rotation and who has offered himself for re-appointment, be and is hereby re-appointed as director of the company.”

SPECIMEN RESOLUTION FOR APPOINTMENT OF DIRECTOR OTHER THAN THE RETIRING DIRECTOR

“RESOLVED THAT Mr. B who has filed his consent to act as a director pursuant to Section 152(5) of the Companies Act, 2013, be and is hereby appointed as director of the company whose period of office shall be liable to determination by the retirement of directors by rotation.”

SPECIMEN RESOLUTION OF THE BOARD FOR APPOINTMENT OF ADDITIONAL DIRECTOR

“RESOLVED THAT pursuant to the provisions of article of the Articles of Association of the company, Shri “Y” who has signified his consent to act as a director, be and is hereby appointed as an additional director of the company to hold office till the next annual general meeting.”

“RESOLVED FURTHER THAT Shri Secretary/Director be and is hereby authorized to affix digital signature and submit Form MR-2 with the Registrar of Companies and to do all such acts and deeds as may be required to be done in this regard.”

SPECIMEN RESOLUTION OF THE BOARD TO FILL THE CASUAL VACANCY

“RESOLVED THAT pursuant to the provisions of Section 161 and article..... of the Articles of Association of the company, Shri ‘X’ be and is hereby appointed as director to fill the casual vacancy caused by the death of Shri ‘Y’ whose office shall be liable to termination on the date upto which Shri ‘Y’ would have held office if he were alive.”

“RESOLVED FURTHER THAT Shri Secretary/Director be and is hereby authorized to affix digital signature and submit Form MR-2 with the Registrar of Companies and to do all such acts and deeds as may be required to be done in this regard.”

SPECIMEN RESOLUTION OF THE BOARD FOR APPOINTMENT OF ALTERNATE DIRECTOR

“RESOLVED THAT pursuant to the provisions of Section 161 of the Companies Act, 2013, read with Article of the Articles of Association of the Companies, Shri be and is hereby appointed as alternate director to Shri during the latter’s absence for a period of not less than three months from the State of (mention the State where the meetings are held) and that the alternate director shall vacate his office as and when Shri returns to the said State.”

“RESOLVED FURTHER THAT Shri Secretary/Director be and is hereby authorized to affix digital signature and submit Form MR-2 with the Registrar of Companies and to do all such acts and deeds as may be required to be done in this regard.”

SPECIMEN RESOLUTION FOR APPOINTMENT OF DIRECTOR ELECTED BY SMALL SHAREHOLDERS

“WHEREAS the company has 2000 small shareholders holding shares of nominal value as per the list tabled and initialled by the Chairman of the meeting,

AND WHEREAS pursuant to Section 151, the company may have at least one shareholder elected by such small shareholders where the number of such small shareholders is 1000 or more,

NOW THEREFORE it is Resolved that Mr. X, director, be and is hereby elected in accordance with the Rule 7 of Companies (Appointment and Qualification of Directors) Rules, 2014.”

SPECIMEN RESOLUTION FOR REMOVAL OF DIRECTOR

“RESOLVED THAT pursuant to notice received from Mr. X, member of the company in accordance with Section 169 of the Companies Act, 2013, Mr. B be and is hereby removed from the office of director of the company.

RESOLVED FURTHER THAT an extraordinary general meeting of the company be held onat (time) at(venue) to secure the consent of members in this regard.

RESOLVED FURTHER THAT the notice of the General Meeting, as per the draft submitted to this meeting, be approved and that the same to issued to all eligible members of the company.

RESOLVED FURTHER THAT the Secretary of the company be authorised to take all further steps as required under Section 169 of the Companies Act, 2013, in respect of this resolution.”

SPECIMEN OF NOTICE TO THE DIRECTOR PROPOSED TO BE REMOVED NOTICE

To,

The CS
XYZ

Dear Sir,

We write to inform you that the company has received a notice from a shareholder of the company of a resolution for your removal from the office of director. The said resolution is intended to be moved at the

General Meeting to be held at.....on..... 2013..... at.....hours.

A copy of the aforesaid resolution is enclosed for your perusal. We draw your attention to the provisions contained in Section 169(3) of the Companies Act, 2013 pursuant to which you are entitled to be heard on the resolution at the meeting. Further in terms of Sub-section (4) thereof you can make a representation in writing to the company for notification to the members of the company. We also enclose the agenda of the meeting with a request to attend the Meeting.

Thanking you

Yours faithfully for ABC Limited

Place:

Dated:

Secretary

SPECIMEN OF BOARD RESOLUTION APPOINTING MANAGING DIRECTOR

“RESOLVED THAT –

- (i) in accordance with Sections 164, 196, 197, 203 and other applicable provisions, if any, of the Companies Act, 2013 and Schedule V to the Act and subject to the approval by a resolution of the shareholders in general meeting, Shri be and is hereby appointed as Managing Director of the company for a period of five years commencing from and ending on, on the terms and

conditions contained in the agreement, draft whereof was laid on the table of the meeting and initialled by the chairman of the meeting as a mark of identification, and the same agreement be executed by the and between the company and Shri on the day the managing director assumes charge of the office;

- (ii) Shri Director of the company, be and is hereby authorised to sign and execute, on behalf of the company, the agreement with Shri which shall be executed under the common seal of the company to be affixed in the presence of, Shri Director and Shri, Secretary of the company, who shall sign the same, and
- (iii) Shri, Company Secretary, be and is hereby authorised to prepare, sign and file with the concerned Registrar of Companies with the prescribed filing fee, the following documents:
 - (a) return is Form MR-1 for the appointment of the Managing Director as per requirement of Sub-section (2) of Section 170 of the Companies Act, 2013 and Part III of Schedule V to the Companies Act, 2013, duly certified by the auditor or the company secretary or secretary in whole time practice to the effect that the requirements of Schedule V have been complied with and such certificate shall be incorporated in the return, to be filed within ninety days of the passing of this resolution;
 - (b) along with a certified copy of the foregoing resolution for registration of the resolution as required under Section 117 of the Companies Act, 2013, within thirty days of the passing of the resolution.

SPECIMEN OF ORDINARY RESOLUTION APPOINTING MANAGING DIRECTOR

“RESOLVED THAT pursuant to the provisions of Sections 164, 196, 197 and 203 read with Schedule V and all other applicable provisions, if any, of the Companies Act, 2013 including any statutory modification or re-enactment thereof and subject to such approvals as may be necessary, approval of the members of the company be and is hereby accorded to the appointment of Shri as the Managing Director of the company for a period of five years with effect from 1st January, 2015 upon the terms and conditions including remuneration as set out in draft agreement submitted to this meeting and initialled by the Chairman for the purpose of identification, which agreement be and is hereby approved and sanctioned with the authority to the Board of directors of the Company to alter and vary the terms and conditions of the said appointment and/or agreement in such manner as the Board may deem fit and as may be acceptable to Shri....., the Managing Director.”

“RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorized to do all such acts, deeds and things and execute all such documents, instruments, and writings as may be required to give effect to the aforesaid resolution.”

Explanatory Statement

The Board of directors of the company at their meeting held on appointed Shri as the Managing Director of the Company for a period of five years effective from 1st January, 2015 on the terms of appointment and remuneration payable to Shri....., Managing Director of the company as are specified in the draft agreement to be executed between him and the company, a copy of which (as has also been duly approved by the Board) will be placed before the meeting and is subject to the approval of the shareholders and other approvals, if any, as may be necessary.

The principal terms of appointment and remuneration of Shri..... are as follows:

- 1. Salary:
- 2. Commission:
- 3. Perquisites, allowance and other benefits:

4. Minimum Remuneration:

Notwithstanding anything to the contrary herein contained, where in any financial year, the company has no profits or its profits are inadequate, the company will pay Shri....., the Managing Director of the company, the remuneration by way of salary, perquisites and allowances as specified above subject to the approval of the Central Government, if required.

The Managing Director shall also be entitled to reimbursement of expenses actually incurred by him for the business of the company. He shall not be paid any sitting fees for attending meetings of the Board or Committee thereof.

Shri....., Managing Director shall not be liable to retire by rotation. The resolution is recommended for your approval.

Copies of the Memorandum and Articles of Association of the company, draft agreement to be entered into between the company and Shri....., Managing director duly approved by the Board, and all other relevant documents and papers are open for inspection at the Registered Office of the company between 10.00 a.m. to 12.00 noon on any working day prior to the date of the meeting.

None of the directors of the company except Shri..... is concerned or interested in the resolution.

SPECIMEN NOTICE UNDER SECTION 201

I. Notice under Section 201 for Central Government’s Approval to the Appointment of Managing Director

.....Limited

Notice

Pursuant to the provisions of Section 201 of the Companies Act, 2013, notice is hereby given that the Company intends to apply to the Central Government for its approval under Section 200 of the Companies Act, 2013 for the appointment of Shri as Managing director of the Company, for a period of five years effective from on the terms and conditions as contained in the Draft Agreement approved by the Board of directors on

Registered Office:

For Limited

.....
.....

Secretary

Dated.....

II. Notice under Section 201 for Central Government’s Approval to Increase Managing Director’s Remuneration

.....Limited

Notice is hereby given pursuant to Section 201 of the Companies Act, 2013 (the Act) that the company intends to make an application to the Central Government for its approval under Section 200 of the Act to the increase in the remuneration payable to Shri....., Managing director of the Company.

Registered Office:

For.....Limited

.....
.....

Secretary

Dated.....

SPECIMEN OF BOARD RESOLUTION APPOINTING A PERSON AS MANAGING DIRECTOR, WHO IS MANAGING DIRECTOR OR MANAGER OF ONE OTHER COMPANY

The chairman informed the meeting that –

- (i) Shri is the managing director of ABC Ltd., which is a wholly-owned subsidiary of this company;
- (ii) For administrative convenience and better functioning of both the companies, this company is desirous of appointing the said Shri as its managing director and the said Shri..... is willing to accept the appointment as managing director of this company without any remuneration.
- (iii) Shri is already a director of this company and is competent and not disqualified to be appointed as the managing director of this company and pursuant to proviso to Sub-section (3) of Section 203 of the Companies Act, 2013, due specific notice of this meeting and of the proposed resolution has been given to all the directors for the time being present in India.

The meeting discussed the matter and passed the following resolution:

“RESOLVED THAT consent of all the directors present at the meeting be and is hereby accorded to the appointment of Shri....., who is managing director of ABC Ltd. also, as the managing director of this company without any remuneration and the managing director shall exercise such powers and perform such functions as the Board of directors may, from time to time require him to exercise and perform.”

SPECIMEN OF BOARD RESOLUTION APPOINTING MANAGER

“RESOLVED THAT in accordance with Sections 164, 196, 197 and 203 read with Schedule V and other applicable provisions of the Companies Act, 2013 and Schedule V to the Act and subject to approval by a resolution of the shareholders in general meeting, Shri be and is hereby appointed as manager of the company for a period of five years commencing from and ending onon the terms and conditions contained in the agreement, draft whereof was laid on the table of the meeting, approved by the meeting and initialled by the chairman of the meeting as a mark of identification, to be executed by and between the company and Shri on the day the manager assumes charge of the office;

RESOLVED FURTHER THAT Shri, director of the company, be and is hereby authorised to sign and execute, on behalf of the company, the agreement of appointment of Shri as manager of the company, which shall be executed under the common seal of the company to be affixed in the presence of Shri, director and Shri, secretary of the company, who shall also sign the same in token thereof, and

RESOLVED FURTHER THAT Shri, company secretary, be and is hereby authorised to prepare, sign and file with the concerned Registrar of Companies with the prescribed filing fee, the following documents:

- (a) return is Form MR-2 for the appointment of the Managing Director as per requirement of Sub-section (2) of Section 170 of the Companies Act, 2013 and Part III of Schedule V to the Companies Act, 2013, duly certified by the auditor or the company secretary or secretary in whole time practice to the effect that the requirements of Schedule V have been complied with and such certificate shall be incorporated in the return, to be filed within ninety days of the passing of this resolution; and
- (b) Form MR-2, in respect of the appointment of the manager, to be filed within thirty days of the passing of this resolution.

MANAGING DIRECTOR'S AGREEMENT

This Agreement is made at on between Limited and its Managing Director Mr.

PREAMBLE

- (1) Limited ("the Company") is a public company incorporated under the Companies Act, 2013 and has its Registered Office at
- (2) Mr. aged years, an Indian resident, currently residing at
- (3) The Board of Directors of the Company at their meeting held on appointed Mr. as the Managing Director of the Company by a resolution.

This Agreement sets out the terms and conditions governing the appointment of the Managing Director

DEFINITIONS

- 1. "Act" means the Companies Act, 2013
- 2. "Articles" means the Articles of ABC Limited.
- 3. "Company" means ABC Limited.
- 4. "Managing Director" means
- 5. "Board" means the Board of directors of ABC Limited.

AGREEMENT

- (1) The Company appoints Mr..... as its Managing Director and the Mr..... agrees to act as a Managing Director of the Company for 3 years from..... to
- (2) The Managing Director shall work under the superintendence, control and direction of the Company's Board, shall have the powers of general conduct and management of business and affairs of the company in relation to the following functions, namely: (a)....., (b), (c)....., except in the matters which may be specifically required to be done by the Board either by the Act or by the Articles.
- (3) The Managing Director will exercise and perform such powers and duties as the Board may from time to time delegate to him. He will also do and perform all other acts, deeds and things which in the ordinary course of business he may consider necessary or proper, or in the interest of the Company.
- (4) Without restricting the general powers and authorities as mentioned above, the Managing Director will have the following powers to be exercised on behalf of the Company:-
 - (a)
 - (b); and
 - (c)
- (5) The Managing Director shall hold his office for 3 years beginning from..... However the Board may extend the term of his office.
- (6) The Company or the Managing director may terminate this Agreement before its term is over by giving a notice of the intention to terminate it at least 3 months before the date on which the termination is to come into effect. If such notice is given, the Agreement will come to an end when the 3 months notice period is over.
- (7) The Managing Director shall devote adequate time and attention to the Company's business.

- (8) The Managing Director shall always comply with the directions given and regulations made by the Board and he shall faithfully serve the Company and use his best efforts to promote its interests.
- (9) For the services provided, the Company shall pay the Managing Director the remuneration specified below.

SALARY

₹ (Rupees only) per month.

PERQUISITES:

In addition to the aforesaid salary, the Managing Director shall be entitled to the following perquisites:

- (a) Fully furnished residential accommodation. Where no accommodation is provided by the Company, suitable house rent allowance in lieu thereof may be paid. The expenses on furnishings, gas, electricity, water and other utilities shall be borne by the Company.
- (b) Reimbursement of all medical expenses incurred for self and family.
- (c) Leave travel assistance for self and family as per Company rules.
- (d) Fees of clubs, which will include admission and life membership fees.
- (e) Education allowance for the education of his children not exceeding ₹ per annum per child.
- (f) Personal accident insurance, premium whereof does not exceed ₹ ... per annum.
- (g) A car with driver for official purpose.
- (h) Telephone and fax facilities at residence.
- (i) 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.
- (j) Gratuity at the rate not exceeding half a months salary for each completed year of service, and
- (k) Leave at the rate of one month for every eleven months of service. Leave not availed of may be encashed. Family for the above purpose means wife, dependent children and dependent parents of the Managing Director.

COMMISSION

Commission shall be decided by the Board of Directors based on the net profits of the Company each year subject to the condition that the aggregate remuneration of the Managing Director shall not exceed 5% of the net profits of the Company, in accordance with sections 196, 197 and Schedule V to the Companies Act, 2013.

MINIMUM REMUNERATION

In the event of loss or inadequacy of profits in any financial year during the currency of his tenure as Managing Director, the payment of salary, perquisites and other allowances shall be restricted to ₹ per annum or ₹ per month in terms of SECTION II of Part II of Schedule V to the Companies Act, 2013 as minimum remuneration.

For the purpose of computation of minimum remuneration, the following shall not be included:

- (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 at the rate not exceeding half a months salary for each completed year of service, and
- (c) Encashment of leave at the end of the tenure.

(10) **Sitting Fees.** The Managing Director shall not be paid any sitting fees for attending the meeting of the Board of directors or Committee thereof from the date of his appointment.

(11) The Headquarter of the Managing Director shall be in the State of

(12) Subject to the provisions of the Act, Managing Director shall not while he continues to hold office of the Managing Director be subject to retirement by rotation of Directors and he shall not be reckoned as a Director for the purpose of determining the rotation or retirement of Director or in fixing the number of Directors to retire, but he shall *ipso facto* and immediately cease to be the Managing Director if he ceases to hold office of Director for any cause.

(13) The Managing Director shall not during the continuance of his employment or at any time thereafter divulge or disclose to any person whomsoever or make any use whatever for his own or for whatever purpose, of any confidential information or knowledge obtained by him during his employment as to the business or affairs of the company or as to any trade secrets or secret processes of the company and the Managing Director shall during the continuance of his employment hereunder also use his best endeavours to prevent any other person from doing so.

IN WITNESS WHEREOF the company has caused its Common Seal to be hereunto affixed and the Managing Director has hereunto set his hand the day and year first hereinabove written.

The Common Seal of Ltd. was hereunto affixed pursuant to a resolution of the Board of directors of the company, dated the in the presence of Shri the Director thereof.

Director

Director

SIGNED, SEALED AND DELIVERED by the above named Shri the Director of the company in the presence of Shri
Director

SIGNED, SEALED AND DELIVERED by the within named Shri the Managing Director in the presence of Shri
Managing Director

COUNTERSIGNED BY Shri
 the Company
 Secretary in the presence of Shri
Company Secretary

Special Power of Attorney

This power of Attorney is executed and given on this day of by Limited, a public company within the meaning of Section of the Companies Act, 2013 (the Act) and having its registered office at state of, India (the Company).

The company has appointed Mr. as its managing director.

In connection with the affairs of the company, by this Power of Attorney, the Company gives Mr. the powers specified below:

Subject to the superintendence, control and direction of the Board of directors of the company the said Attorney as the Managing Director of the company and only so long as he holds the position of the Managing Director of the company shall have the general conduct and management of the whole of business and affairs of the company except in the matters which may be specifically required to be done by the Board either by the Companies Act, 2013 or by the articles of association of the Company and the Managing Director shall also exercise and perform

such powers and duties as the Board of directors of the company (hereinafter called “the Board”) may from time to time determine and shall also do and perform all other acts and things which in the ordinary course of business he may consider necessary or proper or in the interest of the Company and in particular but without in any way restricting the general powers and authorities hereinbefore conferred upon the Managing Director, the attorney shall in particular have the following powers on behalf of the company viz:

- (1) To manage, conduct and transact all the business affairs and operations of the company including power to enter into contracts and to vary and rescind them.
- (2) To enter into and sign for and on behalf of the company (not being required to be executed under its Common Seal or not otherwise provided for in the articles of association of the company), all deeds, instruments, contracts, receipts, letters, papers, agreements, documents of title, banking and commercial documents and all other documents, papers, etc. whether in India or abroad whatsoever in connection with or relating to the business and affairs of the company.
- (3) For and on behalf of the company, to make, sign, draw, accept, endorse, negotiate, sell and transfer, discharge and deliver, assign, re-transfer, re-assign, surrender, discontinue, make paid up, deal with and exercise any right in respect of or arising out of any policy of insurance or any other actionable claim and all cheques, bills of exchange (inland or foreign), drafts, hundies, pay orders, promissory notes, dock warrants, delivery orders, railway receipts, motor transport receipts, bills of lading, air consignment notes, warehouse warrants, and other mercantile documents and other negotiable instruments and securities charter party, ships certificate or all other warrants, certificates or other documents of symbol or indicia of goods or of possession or title to goods or movable property of any kind.
- (4) To become party to and to present for registration and admit execution of and to do every act, matter or thing necessary or proper to enable registration on behalf of the company of all deeds, instruments, contracts, agreements, receipts and all other documents whatsoever.
- (5) To institute, defend, prosecute, conduct, compound, refer to arbitration and abandon and to compromise legal or other proceedings, claims and disputes by or against the company or in which the company may be concerned or interested, AND ALSO to accept service of any writ of summons or other legal processes and to appear and to represent the company in any courts and before all judges, magistrates or judicial, revenue and administrative or executive officers or bodies or tribunals and before all other authorities including municipal, industrial, labour, income-tax and other tax authorities, tribunals and bodies whatsoever as the said Attorney may think fit and for and in the name of the company or otherwise as may be necessary to commence any action, suit, appeal, petition or other proceedings in any court, judicial, revenue, industrial, labour or other, or before any other officer, body, authority or tribunal for any reliefs, declaration, right, title, interest, property, matter or thing wherein the company is or may hereafter become interested or concerned by any means or on any account whatsoever or otherwise in relation to any of the company’s affairs, property and business or in which the Company may be or may be deemed to be necessary as a party and the same action, suit, appeal, petition or proceedings to prosecute or discontinue or to become non-suit therein if the said Attorney shall think fit or be advised and to take all execution and other proceedings and also to take such other lawful ways, means or steps for the enforcement, realisation or possession of any reliefs, rights, interests, claims, demands or property in relation to any of the properties, affairs and business of the company whatsoever to which the said Attorney may consider the company to be entitled or which may be considered to be due, owing or belonging to the company by or from any person(s), firm or company whatsoever; AND also to join with any other party as a party to any action, suit, petition or other legal proceeding whether as plaintiff or defendant or appellant or respondent and to interplead, claim set-off or make a counter claim, and to issue or cause to be issued third party notices.
- (6) To receive and give effectual receipts and discharges of moneys, funds, goods or property payable to or to be received by the company; AND ALSO to make the following payments on behalf of the company:

- (i) Payments to suppliers of raw materials, goods and services as are required to carry on business of the company.
 - (ii) Payments on account of capital goods purchases subject to the limits laid down by the Board of directors vide its resolution passed at its meeting held on
 - (iii) Payments to employees and contract labour employed or engaged by the company.
 - (iv) Payments for administrative expenses.
 - (v) Payments of all taxes and duties as may be levied and/or imposed by State/ Central Government/s or local authorities.
 - (vi) Interest on deposits/loans at rates sanctioned by the Board of directors or at agreed rates or fixed under any law.
 - (vii) Acceptance and refund of deposits and loans as per rules previously framed by the Board of directors or under any law.
 - (viii) Any other payment to be made by the company in the conduct of its business.
 - (ix) All incentive payments to staff and workers according to the schemes in that behalf.
 - (x) All payments on account of discounts, commission to be paid to the distributors/dealers and agents or any other customer and depot managers as per arrangements in that behalf.
- (7) To convene meetings of the Board of directors, Committees, Sub-Committees of directors, if any, and pursuant to the directions of the Board of directors also the Ordinary or Extraordinary General Meetings of the shareholders.
- (8) Within the limits laid down by the Board of directors by its resolution passed at its meeting held on to purchase, pay for, acquire, either on lease or by purchase, or otherwise, re-purchase, import, exchange, capital assets, properties, buildings, lands, premises, machinery, plants, etc. for factories, workshops, offices, showrooms, stores, etc. of the company whether for cash or credit and either present or future delivery.
- (9) To purchase, pay for, acquire, sell, re-sell, re-purchase and import raw materials, articles, stores, appliances, apparatus, and all other materials and things necessary or expedient for the day to day working of the Company either for cash or credit and either for present or future delivery as also to export the products of the company.
- (10) To build, construct, erect and maintain, pull down, demolish and re-construct warehouses, factories, offices, workshops and all other buildings for manufacturing, storing and otherwise dealing with the Company's properties, articles or things or for the purposes of the trade or business of the Company.
- (11) (i) To make advance upon or for the purchase of goods and all other articles required for the purposes of the Company upon such terms as the Managing Director may think fit;
- (ii) Subject to any schemes, conditions as may be approved/laid down/ prescribed by the Board of directors from time to time, to make advances and grant any loans or accommodation to employees of the company not exceeding such prescribed limits.
- (12) Subject to the provisions of the Act and subject to the provisions of any agreement for the time being in force between the company and any person, to appoint agents, sub-agents, distributors at such place or places as the Managing Director may think fit or necessary.
- (13) Subject to and within the limits laid down by the Board of directors *vide* its resolution passed at its meeting held on to sell, or otherwise dispose of, re-sell, lease-out, export, transfer, exchange, etc. any

capital assets, properties, buildings, lands, premises, machinery, plant, articles, things and products, etc; not involving any sale or disposal of the whole or a part of the undertakings of the company whether for cash or credit and either present or future.

- (14) Subject to and within the overall borrowing limits as laid down by the Board of directors *vide* its resolution passed at its meeting held on to raise or borrow (otherwise than by debentures) from time to time in the name of or otherwise on behalf of the company such sum(s) of money as may be deemed necessary or expedient.
- (15) Within the limits laid down by the Board of directors *vide* its resolution passed at its meeting held on, to invest and deal with the moneys of the Company not immediately required upon such investments of such nature as may be specified by the Board of Directors from time to time or to deposit the same with banks, shroffs, or persons and from time to time to realise and vary such investments.
- (16) Subject to the provisions of section 179 of the Companies Act, 2013, and when so authorised by the Board and within the limits from time to time fixed by the Board, to make loans for such purposes and upto such maximum amount for such purpose as may be specified by the Board from time to time.
- (17) To insure and keep insured company's properties, buildings, machinery, plants, materials, equipment and all other properties of the company, movable or immovable either lying in the godowns, showrooms, or offices or in the workshops or factories or elsewhere or in transit for import or in which the company is interested whether as owner, mortgagee, pledgee, hypothecatee, chargee or otherwise howsoever against loss or damage by fire or other risks to such amount and for such period as the Managing Director may deem proper and to sell, assign, surrender or discontinue any of the insurances effected in pursuance of this power and also to receive moneys payable upon such policy and to give receipts and discharges for the same.
- (18) To operate upon and open accounts, current, fixed or otherwise with any bank or bankers, merchant(s) or with any company(ies), firm(s), individual(s) and to pay moneys into and to draw moneys from any such account(s) from time to time as the attorney may think fit and also to operate such account(s) and to authorise such officers/employees of the Company as the attorney may deem fit to operate such account(s) on behalf of the company.
- (19) To attend and vote at all meetings in all bankruptcy, insolvency and liquidation or other proceedings in which the company may be interested or concerned.
- (20) Within the limit for salary laid down by the Board of directors *vide* its resolution passed at its meeting held on, to appoint or employ, engage for the company's transactions, and management of affairs persons in the service of the company either on probation or temporarily or permanently and from time to time to suspend, award punishment, or dismiss, remove, or otherwise terminate the employment with or without notice of any person(s) whether now or hereafter employed in the service of the Company and also from time to time to transfer, re-transfer, re-appoint, re-employ or replace any persons, managers, officers, clerks, workmen, employees and other members who may be in the employment of the company now or hereafter be so employed.
- (21) Within the limits laid down by the Board of directors *vide* its resolution passed at its meeting held on to make and pay donation(s) or contribution(s) to charitable and other funds not directly relating to the business of the Company or the welfare of its employees.
- (22) To employ, engage, retain, consult, pay and to terminate the engagement or employment of brokers, notaries, architects, surveyors, valuers, clearing and forwarding agents and all such persons, and agents whose services may be necessary or proper for the exercise of powers conferred on the attorney; to appoint, engage and instruct, lawyers, advocates, pleaders, attorneys, solicitors, barristers, vakils, income-tax and other consultants, experts, brokers, merchants, engineers, retail and wholesale commission dealers,

muccadams, technicians, experts, etc. with such powers and duties and upon such terms as to duration of employment, remuneration or otherwise as the attorney may deem fit and to give and sign any retainers, authorities, vakalatnamas, warrants and other papers in connection therewith or otherwise as may be required or advised.

- (23) To incur from time to time subject nevertheless to the provisions of the Act, such expenses and to lay out such sum(s) of money as the Managing Director may deem expedient for the offices, or the establishments of the Company and for the purpose of maintaining and carrying on the works and business of the company as he may think fit.
- (24) From time to time, provide by the appointment of any attorney(s) or officer(s) for management and transaction of the affairs of the Company generally or in specified locality or district or province or State.
- (25) To sign, make and file any notice or form or return or account in connection with the income tax or any other tax whether in respect of income or capital; by whatever name called whether now levied or hereafter to be levied or in connection with any rate, tax, assessment, levy or cess, and to make, sign, declare, affirm, verify and file any petition, application, affidavit, appeal, reference, review or revision applications or any other proceedings whatsoever under any Act, Ordinance or Order or rules or regulations relating to taxation of income or capital or the levying and collection of any tax, rates, cess, assessment of levy of whatsoever kind or nature whether now or hereafter to be in force and to sign and execute Court Bonds, or any other Bond, recognisance or bail bonds.
- (26) To sign, execute and deliver all such affidavits or declarations or agreements, contracts, deeds, assurances, documents and instruments as the attorney may deem necessary or proper including in particular and without prejudice to the generality of the foregoing and subject to the provisions in the Companies Act, 2013 and any other applicable enactment any deed of sale or conveyance or assignment, or deed of mortgage or charge or transfer of mortgage or sub-mortgage or release and/or reconveyance of mortgage or re-assignment of mortgage, or deed of lease or sub-lease or surrender of lease, or deed of exchange or surrender or renunciation, or deed or transfer of any property, deed or agreement of pledge, hypothecation or lien or charge or any other encumbrance and any other deed or document or instrument whatsoever which may in the opinion of the Attorney be required to be executed by the company whether alone or jointly with other or others.
- (27) To make, sign and execute, receipts, releases, re-conveyances, re-assignments, re-transfers and acquittances and discharges of all kinds and to adjust or record satisfaction of any decree or order or award or any other matter requiring record of satisfaction and either in full or in part and to sign receipts and discharges for any monies payable to the company.
- (28) To execute, enforce, perform and carry out and obey any decree, order, award or decision in which the company may be in anywise interested or concerned either as a party or otherwise.
- (29) To concur in doing any of the acts and things hereinbefore mentioned in conjunction with any other persons interested in the premises.
- (30) For the better and more effectually doing, effecting, executing and performing the several matters and things aforesaid, to appoint from time to time or generally such person or persons as the attorney or attorneys shall think fit as their or his substitute or substitutes to do, execute and perform all or any such matters and things as aforesaid and at pleasure to remove any such substitute or substitutes and to appoint any other or others in his or their place.
- (31) To comply with and/or cause to be complied with all statutory requirements affecting the Company and to represent the Company before any Government, courts of law, civil, criminal, industrial or labour, revenue or before all conciliators, other public officers, authorities, bodies or tribunals in connection with all suits, actions, petitions, appeals and other legal or other proceedings and matters whether civil, criminal, revenue,

industrial or labour in which the Company may be concerned or interested whether as plaintiffs, defendants, petitioners, appellants, respondents, opponents, prosecutors, opposing creditors or in any other capacity whatsoever or otherwise howsoever and in all matters in anywise concerning the business affairs and properties of the company and to appear and to represent the company in all actions, suits, appeals, petitions, and other proceedings under all Acts or enactments of the Parliament of India or of any State Legislature including particularly, among others the following Acts or enactments namely:

..... and to affirm, declare and sign all pleadings, applications, petitions, statements, memoranda of appeal, affidavits, documents, acknowledgments and papers in connection therewith and to appear and to represent the company before all officers, authorities, bodies or tribunals under any of the said Acts or enactments.

(32) AND GENERALLY for the purposes aforesaid to execute all such instruments, acts, deeds, matters and things as the said Attorney shall be advised or think incidental or proper and that as amply and effectually to all intents and purposes as the company itself could do or would have done if these presents had not been made the company ratifying and confirming and agreeing to ratify and confirm all and whatsoever the said Attorneys or Attorney shall lawfully do or cause to be done in or about the premises by virtue of these presents:

Provided always that no person/persons dealing with the Attorney shall be concerned to see or enquire whether or not the Attorney is acting in accordance with the directions of the Board of Directors in those matters wherein he is required to act subject to such directions and notwithstanding any breach of such directions committed by the Attorney in regard to any act, deed, matter or thing authorised to be done or executed the same shall between the company and the person or persons dealing with the Attorney be valid and binding on the company to all intents and purposes unless the person or persons dealing with the Attorney shall have notice of such directions.

In witness whereof, the company has caused its Common Seal to be affixed hereto at this day of 20.....

The Common Seal of the was hereunto affixed pursuant to a resolution of the Board of Directors of the company dated in presence of

Counter signed by

LESSON ROUND UP

- 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.
- Directors may be appointed by the Board or by the shareholders at the General Meeting.
- Directors may be appointed as Additional Directors, Alternate Director or for filling the Casual vacancy.
- The increase in number of directors beyond the limit of twelve directors needs prior approval of the Central Government and authority by the Articles of Association.
- Directors may be removed by the shareholders at the General Meeting by the Central Government and/or by the Company Law Board.
- A managing director or a whole-time director 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 other.
- Section 185 of the Companies Act, 2013 governs the making of loan to directors.
- D & O Liability Insurance policy normally indemnifies in respect of damages awarded against Directors or

Lesson 9

Company Secretary

LESSON OUTLINE

- Who can be a Company Secretary
- Functions of a Company Secretary
- Role & Responsibilities of company Secretary
- Statutory duties and liabilities of company Secretary
- Appointment of Company Secretary
- Removal of Company Secretary
- Appointment as Compliance Officer
- Company Secretary in Practice and areas of practice
- Permission to practice granted generally
- Permission to practice to be granted specifically
- Appointment of a Company Secretary in whole-time practice
- Removal of Company Secretary in Practice
- Functions of Company Secretary in Practice
- Role of Company Secretary in Practice
- Designation to be used by members in practice
- Prefix of CS
- Annexure – Specimen Resolutions
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Company Secretaries, the governance professionals are the natural conscience keepers for the corporate sector since they are specialists in the field of corporate Governance, regulation and processes and are the eyes and ears of the Board on such matters.

Rule-8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, provides that all companies (including Private Companies) are required to appoint Company Secretary in whole time employment whose paid up Share Capital is five crore rupees or more.

The Companies Act, 2013, has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice.

Hence, a Company Secretary assumes great importance in the corporate world. This lesson will make you understand about the role and functions of Company Secretary in employment as well as in practice, requirements related to their appointment, removal etc.

WHO CAN BE A COMPANY SECRETARY

According to Section 2(24) of the Companies Act, 2013, "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 and who is appointed by a company to perform the functions of a company secretary under this Act.

According to clause (c) of Sub-section (1) of Section 2 of the Company Secretaries Act, 1980, a company secretary means a person who is a member of the Institute of Company Secretaries of India.

Therefore, 'Company Secretary' means a person who is a member of the Institute of Company Secretaries of India (ICSI) and who is appointed by a company to perform the functions of a company secretary. The functions of company secretary have been detailed in section 205 of the Act.

FUNCTIONS OF A COMPANY SECRETARY

According to Section 205 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 issued by the Institute of Company secretaries of India (ICSI) and approved by the Central Government.
- (c) to discharge such other duties as may be prescribed.

DUTIES OF COMPANY SECRETARY AS PRESCRIBED IN RULE 10 OF COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014

The Central Government has prescribed following duties of Company Secretary:-

- (1) 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;
- (2) to facilitate the convening of meetings and attend Board, committee and general meetings, and maintain the minutes of these meetings;
- (3) to obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of the Act;
- (4) to represent before various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions under the Act;
- (5) to assist the Board in the conduct of the affairs of the company;
- (6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- (7) to discharge such other duties as have been specified under the Act or rules; and
- (8) such other duties as may be assigned by the Board from time to time.

Section 205(2) provides that provisions contained in section 204 in relation to secretarial audit and section 205 in relation to functions of company secretary shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole- time director under this Act, or any other law for the time being in force.

ROLE & RESPONSIBILITIES OF COMPANY SECRETARY

A company secretary is an officer of the company responsible for compliance by the company with the provisions of the Companies Act, 2013 and various other corporate, taxation, industrial and economic laws applicable to companies in general.

Under the Companies Act, the role of a secretary is three-fold, viz., as a statutory officer, as a co-ordinator and as an administrative officer if so authorized. Similarly, the responsibility of company secretaries extends not only to a company, but also to its shareholders, depositors, creditors, employees, consumers, society and government.

The role of a company secretary may conveniently be studied from three different angles:

- (a) as a statutory officer,
- (b) as a co-ordinator,
- (c) as an administrative officer.

(a) Statutory Officer: The company secretary is an officer responsible for compliance with numerous legal requirements under different Acts including the Companies Act, 2013 as applicable to companies. The responsibilities of company secretary has also increased as he has been included in the definition of Key Managerial Personnel as defined in section 2(51) of the Act, who are also liable to punishment by way of imprisonment, fine or otherwise for violation of the provisions of the Companies Act which hold the “officers in default” under Section 2(60).

Company Secretary is one of the key managerial person of a company. All companies (including Private Companies) are required to appoint Company Secretary in whole time employment whose paid up Share Capital is five crore rupees or more. However, Company Secretary is not a ‘managerial personnel’ for purpose of restriction on remuneration under section 197 of Companies Act, 2013. His salary is not considered for purpose of computation of ‘managerial remuneration’ under section 197 of the Companies Act, 2013, unless he is also a director of the company.

The various provisions and rules framed under the Companies Act make it obligatory for the secretary to sign the annual return filed with the Registrar [Section 92], duty to report fraud [Section 143(12)] and to make declaration under Section 7(1) of the Act before incorporation of a company confirming that all the requirements of Act and the Rules thereunder have been complied with in respect of registration of a company and the Registrar may accept such a declaration as sufficient evidence of such compliance.

Under Regulation 18(1)(e) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 the Company Secretary shall act as the secretary to the Audit Committee in case of a listed company.

Under the Indian Stamp Act it is the duty of a secretary to see that the documents such as letter of allotment, share certificate, debentures, and mortgages are issued duly stamped. He is the principal officer under Section 2(35) of the Income Tax Act, 1961.

The most important task of the company pertaining to statutory and legal obligations comes upon the secretary. Under the Companies Act, he has to either comply with the various provisions of the Act or is liable to be fined or imprisoned for non-compliance of his obligations.

Thus the responsibility of a secretary as a statutory officer has been greatly expanded by enactment of various economic statutes, like Competition Act, Industries (Development and Regulation) Act, Foreign Exchange Management Act, SEBI Act, SCRA and Depositories Act. Accordingly, the numerous provisions which a Company is obliged to comply with, makes the secretary’s job onerous and difficult. The duties imposed upon a secretary by various statutes clearly indicate the important place he occupies in the corporate administrative hierarchy.

(b) Co-ordinator: On dealing with the Board functions, Peter Drucker has this to say — “But there are real functions which only a Board of directors can discharge. Somebody has to give final approval to the objectives; the company has set for itself and the measurements it has developed to judge its progress towards these objectives. Somebody has to look critically at the profit planning of the company, its capital investment policy and its managed expenditure budget. Somebody has to discharge the final judicial function in respect of organisational problems.”

This concept of Peter Drucker provides for the company secretary to co-effectively play a co-ordinating role to achieve the tasks the Board has set itself to.

In India, most companies have an increasing dependence on the financial institutions for assistance. Every big-sized project involves assistance from the financial institutions. These institutions expect the Board of directors to oversee the overall management and performance of the assisted companies and for this purpose, would insist on all basic policy issues to be discussed at the Board meetings and decisions reached. For this purpose, it would be necessary for the company’s management to place all the salient features and information before the Board in order that they can arrive at a proper decision.

This is evidenced by the various conditions imposed in the loan agreements entered into between the financial institutions and the assisted companies. Company managements look to the company secretary for implementation of the conditions in the loan agreements.

The financial institutions stipulate that in the case of companies assisted by them financially, compliance certificate as per their format duly certified by the company secretary should be furnished periodically at the Board meetings.

Furnishing of the certificate requires skill of coordination between the company secretary and the functional heads and the factory manager.

The Company Secretary as a co-ordinator has an important role to play in administration of the company’s business and affairs. It is for the secretary to ensure effective execution and implementation of the management policies laid out by the Board. The position that the company secretary occupies in the administrative set-up of the company makes his function as one of co-ordinator and link between the top management and other levels. He is not only the communicating channel between the Board and the executives but he also co-ordinates the actions of other executives *vis-a-vis* the Board. The ambit of his role as a co-ordinator also extends beyond the Company and he is the link between the Company and its shareholders, the society and the Government. Thus, the role of a company secretary as a co-ordinator has two aspects, namely internal and external. The internal role of a co-ordinator extends to the Board including the Chairman and Managing Director, various line and staff personnel, the trade unions and the auditors of the company. His role as an external co-ordinator extends to the relationship of the company with shareholders, Regulators, Government and Society.

Guidance and Assistance to Board

Rule 10 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, provide that a company secretary shall provide to the directors of the company, collectively and individually, such guidance as they may require with regard to their duties, responsibilities and process.

Whilst the Directors discuss and decide policy matters as a body, the Secretary is responsible for transmitting the policies and decisions of the Board, to all levels in the company and outsiders. His duties in relation to the Board include amongst others:

- (i) Facilitating the convening of meetings, Board, General and committee meetings, drafting out the minutes and reports. With regard to Board and General Meetings Secretarial Standard - 1 and Secretarial Standard - 2 needs to be observed.
- (ii) Keeping the Board informed as an advisor on matters regarding legal, financial and other laws and problems as far as they relate to the company. This will include advising the Board of the various

obligations imposed on the directors by various statutes, including changes in laws which will have a bearing on the activities of the company.

- (iii) He must ensure that all decisions taken by the Board are in consonance with legal requirements, and the powers they exercise do not require approval of the shareholders, Central Government or any other authority.
- (iv) Since meetings of the Board are confidential in nature, he should ensure secrecy regarding matters discussed at such meetings.

(Another important duty is to assist the Board in the conduct of affairs of company)

Whilst the Board decides on policy matters, the day-to-day administration of companies is vested in the managing director, if there is one. In other cases, where the company is a board managed company, i.e. where none of the directors is a managing director or a whole-time director, the Secretary has to seek guidance and instructions from the Chairman on all important matters. He must, however, ensure that a Chairman who is not a managing director does not exercise substantial powers of management as he will be deemed to be a managing director within the meaning of the Act and, therefore, his appointment and remuneration will require the approval of the shareholders and the Central Government, if necessary. Where, however, the company has a managing director, he must seek his guidance and instructions regarding implementation of the policies laid down by the Board and also on matters arising out of the implementation of the decisions. He is also required to keep the chairman and managing director apprised of changes in policies of the Government, obligations under various statutes and to give balanced advice on matters which have legal ramifications.

As per Rule 10, he has to assist and advise the Board in ensuring good corporate governance and in complying with Corporate Governance requirements and best practices.

Relationship with other Functionaries

We have seen that the Secretary is responsible for conveying the Board's decisions on various aspects of the company's policies to the persons in-charge of such functions. He is, in addition, responsible to ensure that the returns and reports received from various operational executives are submitted in time, complete in all respects, and do not conflict with the corporate objectives.

Even where different persons are in-charge of other functions, e.g., sales, personnel, etc., it is usually the Secretary who communicates with outside agencies, particularly with government and semi-government bodies to ensure that the information given to various agencies do not conflict with each other and are in accordance with the corporate objectives of the organisation.

Trade Union(s)

Where the Secretary is responsible either directly or through his assistants with industrial relations, he must exercise extreme caution while dealing with Trade Union officials whether they belong to recognised unions or not. He must ensure that proper notes are kept of the discussions and negotiations and all decisions arrived at during such negotiations. Whenever long-term settlement with recognised unions are finalised he should see that the agreement embodying these settlements are in accordance with the relevant statutes applicable.

It is the responsibility of the Secretary through the Human Relations/Industrial Relations to ensure compliance with the provisions of various labour legislations such as Industrial Disputes Act, 1947, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Payment of Bonus Act, 1965, Payment of Gratuity Act, 1972, Payment of Wages Act, 1936, etc.

In many companies, there is a system whereby a compliance report is submitted to the Board at every meeting confirming that there has been no delay in the compliance with the statutory formalities like deposit of Provident Fund Money, E.S.I. Contribution etc.

Whilst he must ensure that the employees guilty of misconduct are charge-sheeted and punished, he must

simultaneously ensure that all formalities, e.g., holding of enquiries etc., must also be scrupulously followed. He should ensure that industrial labor relations are always cordial and he should take steps to further ensure that various creative activities of the employees are encouraged wherever possible by grants and subsidies from the company.

Auditors

Apart from the statutory audit, services of the company's auditors are required for certifications required under various statutes and, therefore, the Secretary must liaise very closely with the auditors. It may be pointed out that copies of minutes of Board meetings and general meetings should be made available for the inspection of the auditors during the statutory annual audit. He is to ensure that before their appointment, proper certificate is obtained under Section 141 (3) (g) of the Companies Act, 2013. The company secretary, on behalf of the company is required to file a notice with the Registrar about appointment within 15 days of the annual general meeting.

Further, with regard to Secretarial audit, section 204(2) provides that it shall be the duty of company to give all assistance and facilities to Company Secretaries in practice for auditing the secretarial and related records.

Shareholders

The relationship with the shareholders is an important sphere of his co-ordinating role and, therefore, the Secretary will have to maintain proper relationships with the shareholders of the company.

He should ensure that there is no delay in the inspection of books and registers required by a shareholder provided all formalities are complied with. He must ensure that extracts of registers demanded by shareholders are furnished to them within the prescribed time.

However, the most important thing for a Secretary is to ensure that all correspondence from shareholders is dealt with promptly and their queries are answered as far as possible keeping the statutory provisions in mind. As part of public relations, he should be able to give time without prior notice to shareholders who personally come for information, to furnish documents or any other matter. He must also ensure that requests for issues of duplicate certificates/dividend warrants and intimation of address are dealt with properly and promptly. This is important as the image of the company will, to a great extent, depend on the relationship of the Secretary with the shareholders.

Government

All the information and correspondence with the government are normally co-ordinated or routed through the Secretary to ensure uniform reporting. The Secretary has a very important role *vis-a-vis* the government. He should endeavour to have information on government policies and programmes in advance wherever possible to ensure effective implementation. Good relationship with the Government can be developed where the company sincerely tries to implement various statutes in letter as well as in spirit.

Community

Section 135 of the Act provides for spending of specified amount for Corporate Social Responsibility, corporate social responsibility of a company has become very important since the company is expected to fulfill certain obligations to the society in which it functions. With this in view, a number of companies have undertaken rural development initiatives including adoption of villages and have built schools, colleges and hospitals to cater to the needs of society. In respect of companies in consumer goods industry, it is necessary to project that the products and their prices are in consonance with the standards expected by the consumers.

Arising out of such social responsibility, many companies have also allowed small sectors to manufacture ancillaries and raw materials required by the organisation for promotion of employment opportunities. The provisions of the Consumer Protection Act, 1986, the Pollution Control Laws, Public Liability Insurance Act,

1991, etc., are important in the operations of companies and the role of Company Secretaries in these areas is quite important.

The principal duty of a secretary as an administrator is to ensure that the activities of a company are in conformity with the company's policy. In his role as an administrator, the secretary provides the very foundation on which the entire structure of company administration is constructed.

The role of a company secretary as an administrator can be sub-divided into organisational, financial, office and personnel administration.

Organizational Administration

Since the secretary has an opportunity of looking at the entire organisation, he has the scope to advise the top management including the Board of directors on the need to develop a good structure. Since the secretary collects, interprets and assimilates information relating to all aspects of business to aid and assist the Board in carrying out its function, he, therefore, gets an opportunity to know the strengths and the weaknesses of the functional executives.

In his role as administrator, wherever applicable he has to make a detailed analysis of various activities, decision-making machinery, inter-departmental relationship and their functioning. He has, therefore, to ensure that the organisational structure is always under constant study. The making of such examination and study and the consequent advice and recommendation for making changes is a task which the company secretary has to perform.

Financial Administration

Since various monthly and periodical operating reports and financial statements are routed for consideration of the board through the secretary, he should analytically study these statements. Thus, as a secretary to the board, the Company Secretary in consultation with the Finance Manager has to devise suitable and proper systems of accounting procedure, internal control and internal audit with a view to safeguarding the company's funds. The Company Secretary should have a good knowledge of budgetary control and procedures, accounts and other related matters. He is also expected to be proficient in dealing with matters connected with taxation.

The Company Secretary is generally assisted by the Chief Accountant in the discharge of his functions relating to financial administration. In many companies, the Secretary is also the Chief Accountant. He has to negotiate with banks and financial institutions the terms of finance both for working capital requirements and capital expenditure.

Office Administration

In all big companies, the office administration is carried on by a departmental head or an officer who generally reports to the Company Secretary. It is the duty of the Secretary to ensure that different departments of the office are properly staffed, organised, co-ordinated and supervised.

He has to review from time to time the various procedures and systems with a view to making the administration effective. He is also responsible in most organisations for office services including transport. The image of a company depends on the design and office layout from the reception to the records.

The Secretary has not only to ensure that these services are maintained and improved but to also ensure that the cost of such services is reviewed from time to time.

Personnel Administration

Personnel administration includes recruitment, training, remuneration, promotion retirement, discharge and dismissal of staff. This is a very important yet difficult task to administer. Whilst in large organisations there may be a separate personnel or Human Resources Manager or Officer, in smaller companies the Secretary

may be called upon to advise and assist the directors on principles and legal points involved in this area of administration.

The Company Secretary should ensure that implication of new rules, orders, in this field of management are advised to all concerned for effective implementation.

Administration-Company's Properties

The secretary has an important role to play in safeguarding the company's interest in property matters. He has to ensure that all properties are properly maintained and insured and maintain a suitable register for each property containing relevant information. He should have a good knowledge of relevant rules and bye-laws applicable to property. He should also ensure that registration of trademarks, patents, licenses or other intellectual property rights are done from time to time and take legal action in respect of infringement of such rights.

Maintenance of Records of Company

The Secretary is required to maintain certain other records in addition to those specified under the Companies Act. The volume, method and procedure will vary with the size and nature of the company.

The secretary also has to ensure that the statutory time limits relating to directors' and shareholders' meetings, payment of dividend and interest, filing of returns under the Companies Act, 2013, Income-tax Act and Sales Tax Act, etc., renewals of contracts and leases and the formalities under stock exchange and SEBI regulations and the listing agreements are complied with.

Ensuring adequacy of systems of safety and security

The secretary has to ensure that adequate systems of safety and security of personnel based on technical advice are available in the factory and office. He is also responsible for devising and maintaining systems to safeguard the valuable company records, or information against loss, theft, fire, etc. He is to review these from time to time to ensure that the properties of the company are adequately insured. The company secretary should have good knowledge of insurance law and practice.

Whilst the above discussion only gives a brief outline, the duties and responsibilities of the company secretary are subject to continuous change and therefore, has to be reviewed from time to time to ensure that he effectively contributes in respect of the above matters. He should, therefore, keep himself abreast with legal changes and practices.

STATUTORY DUTIES AND LIABILITIES OF A COMPANY SECRETARY

Apart from general secretarial duties with regards to organizing Board and general meetings, keeping minutes of meeting, recording approved share transfers, corresponding with directors and shareholders, maintaining statutory records, filing necessary returns with Registrar of Companies etc., the Companies Act, 2013 has also prescribed some duties and authorities, which are as follows—

1. Declaration regarding compliance with requirement of registration

In terms of section 7(1) (b) of the Companies Act, 2013, a company gets incorporated by submitting memorandum and articles duly signed along with a declaration in a prescribed form that all requirements of Act and rules have been complied with in respect of registration of company. Such declaration in prescribed form can be signed by an Advocate, a chartered accountant, cost accountant or company secretary in practice who is engaged in the formation of the company **and** by a person named in the articles as a director, manager or secretary of the company.

2. Authentication of documents, proceedings and contracts

Authentication is more than simply attestation. Authentication is attestation made by proper officer by which he

certifies that a record is in due form of law and that the person who certifies is the officer appointed to do so. A document or proceeding requiring authentication by a company or contract made by or on behalf of a company may be signed by any key managerial personnel or an officer or employee of the company duly authorized by the Board in this behalf. [Section 21]

However, in case of Specified IFSC public and private company, the document or proceeding requiring authentication by a company or contract made by or on behalf of a company may be signed by any key managerial personnel or an officer or any other person of the company duly authorized by the Board in this behalf.

Now, having a common seal is optional [vide Companies (Amendment) Act, 2015]. If, in case, a company does not have a common seal, the requirement of law would be complied with if such requirements is done by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

3. Signing share certificate

Share certificates of the company should be signed by two directors (out of which one should be Managing Director or whole time director, if appointed) and Secretary or other person authorized by Board.

4. Signing annual return

Annual return to be filed with Registrar of Companies has to be signed by a director and Company Secretary. If Company does not have Company Secretary, the return can be signed by company secretary in practice. [Section 2(1)]

5. Signing of financial statements

The financial statement of a company is required to be signed on behalf of the Board atleast by the Chairperson of the company or by two directors out of which one shall be Managing Director and the chief executive officer (If he is director), the chief financial officer and the Company Secretary wherever they are appointed [Section 134(1)]

6. Appear before NCLT

A Company Secretary can appear before National Company Law Tribunal (**NCLT**) on behalf of the company [Section 432]

7. Secretary of audit committee

Company Secretary will be secretary of Audit Committee which is required to be formed by listed companies as per Corporate Governance Code prescribed by SEBI through listing agreement.

8. Secretary as Compliance Officer of listed company

As per clause (1) of Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed company is required to appoint the company secretary to act as 'Compliance Officer', who will be responsible for the following –

- (a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
- (b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities.
- (c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity.
- (d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors:

9. Demat shares

Secretary has to coordinate between depository and stock exchange in case of demat shares.

10. Additional duties

In addition to statutory duties of company secretary, he is often entrusted with additional duties like looking after legal matters, personnel matters, finance and sometime even general administration.

Liabilities of Company Secretary

Company Secretary has been defined as 'Officer in default' along with Managing Director, Manager and Wholetime Director etc. Thus, he can be punished in respect of offences under Companies Act. He may be held liable as Key Managerial Personnel also under various provisions of the Act.

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 –

- (a) Company Secretary, Director or other principal officer of the corporation or
- (b) By leaving it or by sending by post to registered office of the corporation.

However, Validity of this provision has been upheld in *Jute & Gunny Brokers v. UOI* (1962) 32 Comp Cas 845 (SC).

COMPANY SECRETARY AS A KEY MANAGERIAL PERSON

Under section 2 (51) of the Companies Act, 2013, Company Secretary has been recognised as "Key managerial person".

Under section 203 of the Companies Act, 2013, being a key managerial person, company secretary is required to be mandatorily appointed in every company belonging to such class or classes of companies as may be prescribed.

Appointment of Key Managerial Person:

Section 203 (1) of the Companies Act, 2013 provides that every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial person,-

- (i) Managing director, or Chief Executive Officer or manager and in their absence a whole time director;
- (ii) Company Secretary; and
- (iii) Chief financial officer

Provided that an individual shall not be appointed or re-appointed as the chairperson of the company, in pursuance of the articles of association of the company, as well as managing director or Chief Executive Officer of the company at the same time after the date of commencement of the Act unless,-

- (a) The articles of such a company provide otherwise; or
- (b) Company does not carry multiple business;

According to rule 8 of Companies (appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having paid-up share capital of ten crore rupees or more shall have whole time key managerial person comprising of managing director, chief executive officer (CEO) or manager and in their absence, a whole time director, company secretary and chief financial officer (CFO). Thus, private companies and public companies with a paid up share capital of less than ten crore rupees have been exempted from appointing key managerial personnel.

However, The Ministry of Corporate Affairs (MCA) has amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and inserted Rule 8A on 9th June 2014.

Rule - 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

A company other than a company covered under Rule 8 which has a paid up share capital of **five crore rupees or more** shall have a whole-time Company Secretary.

This means that all companies (including Private Companies) are required to appoint Company Secretary in whole time employment whose paid up Share Capital is five crore rupees or more.

Exemption to Section 8 Companies

Vide MCA notification dated June 05, 2015, the provisions of clause (24) of section 2 shall not apply to section 8 company. Section 2(24) defines the term 'Company Secretary'. Therefore, in section 8 companies, any person can be a company secretary and not necessarily the member of ICSI.

LEGAL PROVISIONS RELATING TO APPOINTMENT OF COMPANY SECRETARY

Since company secretary is included in the definition of key managerial person as defined in section 2 (51) of the Companies Act, 2013, the procedure of appointment of company secretary would be similar to other key managerial person. Therefore, Company secretary shall be appointed by means of Board resolution containing the terms and conditions of the appointment including the remuneration. He shall not hold office in more than one company except in its subsidiary company at the same time. Sub-section (3) of Section 203 does not allow a whole-time key managerial personnel (which includes company secretary) to hold office in more than one company except in its subsidiary company at the same time. However, a company secretary can be appointed as director of any company with the permission of the Board.

A director can be appointed as Chief Executive officer, Manager, Company Secretary or Chief Financial Officer [Regulation 77 (ii) of Model Articles of Association Table-F of the Companies Act, 2013]

However, a director cannot sign or authorize a thing in two different capacities [Regulation 78 of Model Articles of Association of company limited by shares as contained in Table-F of Schedule I of Companies Act, 2013]

However, articles of association of companies usually contain an article providing for the appointment of a company secretary. Such a provision is based on regulation 77(1) in Table F of Schedule I to the Companies Act and according to this regulation, subject to the provisions of the Act,–

“a chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board.”

The above regulation gives absolute discretion to the Board of directors of a company to appoint a company secretary, fix the period of his tenure as such, fix his remuneration, revise his remuneration and vary the terms of appointment of company secretary. The Board of directors of a company may appoint a company secretary by passing a resolution either at a duly convened and held meeting or by means of resolution passed by circulation.

Company Secretary is not 'managerial personnel' for purpose of restriction on remuneration

Company Secretary is not a 'managerial personnel' for purpose of restriction on remuneration under section 197 of Companies Act, 2013. His salary is not considered for purpose of computation of 'managerial remuneration' under section 197 of 2013, unless he is also a director of the company.

Vacancy in the Office of Whole-Time Key Managerial Personnel [Section 203(4)]

If the office of any whole-time key managerial personnel (which includes company secretary) 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.

Offence & Penalty [Section 203(5)]

If a company contravenes the provisions relating to appointment of whole-time key managerial personnel (which includes company secretary), 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 director and key managerial personnel of the company who is in default shall also be punishable with fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

Procedure for Appointment of a Company Secretary [Section 203 read with Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]

Since company secretary is one among the key managerial person, the procedure of appointment of company secretary would be similar to appointment of all other key managerial person.

As per Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every company having a paid-up share capital of Rupees five crore or more is required to have a whole time company secretary.

Only an individual, who is a Company Secretary within the meaning of clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 or who possesses the prescribed qualifications, can be appointed as secretary of the company. The Companies (Appointment and Qualification of Secretary Rules), 1988 contain the prescribed qualifications.

(For text of these rules please refer Annexure I at the end of this study).

The following procedural steps should be taken for appointing a whole-time company secretary:

1. Advertise the post, collect applications, hold interview, short list the individuals for the position, and finalise the terms of appointment.
2. Convene a Board meeting after giving notice to all the directors of the company as per section 173 of the Act. At the board meeting, place the proposal of appointing Company Secretary with the details of the person finalized and pass a resolution appointing the company secretary and approving the terms and conditions of his appointment.
3. File return of appointment of company secretary with the Registrar in **Form DIR.12** within thirty days from the date of appointment (date of joining office) and **Form MGT.14** is also required to be filed along with such fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

The particulars of Company Secretary, Income-tax PAN, Membership details (will be validated from ICSI records), residential details, date of appointment, e-mail ID of the person for communication purpose are required to be filled in the Form.

4. A Company Secretary shall not hold office in more than one company except in its subsidiary company at the same time.
5. Make entries in the Register of directors and key managerial personnel under Section 170 of the Act.
6. Inform the Stock Exchange(s) where the company is listed.
7. Since key managerial personnel are included in 'related party' as defined in section 2(76) of the Act, Please verify whether the company secretary so appointed involved in any related party transactions within the provisions of Section 188 of the Act. If yes, then comply with the requirements in this regard.

REMOVAL OF A COMPANY SECRETARY

A company secretary can be removed or dismissed like any other employees of the organization. Since he is appointed by Board, the Board of directors of a company has absolute discretion to remove a company secretary or to terminate his services at any time for any reason or without any reason. However, principles of natural justice like show cause notice, hearing, reasoned order etc. must be followed.

Procedure for Removal/Resignation of a Company Secretary

1. A Company Secretary can be removed in accordance with the terms of appointment and the Board can record the same.
2. Convene a Board meeting after giving notice to all the directors of the company as per section 173, place the matter of removal/resignation of the Company Secretary and pass a resolution to the effect.
3. File **Form DIR-12** in electronic mode within thirty days with the Registrar of Companies together with requisite filing fees. Evidence of Cessation (for example Resignation Letter) is an optional attachment.
4. Inform the stock exchange where the company is listed.
5. Make entries in the Register maintained for recording the particulars of Company Secretaries under section 170.
7. Issue a general public notice, if it is so warranted, according to size and nature of the company.
8. 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.

APPOINTMENT AS COMPLIANCE OFFICER

Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

- (1) A listed entity shall appoint a qualified company secretary as the compliance officer.
- (2) The compliance officer of the listed entity shall be responsible for –
 - (a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
 - (b) co-ordination with and reporting to the Board, recognized stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
 - (c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
 - (d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors:

Provided that the requirements of this regulation shall not be applicable in the case of units issued by mutual funds which are listed on recognised stock exchange(s) but shall be governed by the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

Further under Regulation 27(2)(a) of listing regulations relating to Corporate Governance, the companies shall have to submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format specified by the Board from time to time. The report shall be signed by the Company Secretary/ Compliance Officer/MD/CEO.

The appointment of compliance officer is to be made by the Board and the same is to be intimated to the stock exchanges where the securities are listed, together with certified copy of the Board resolution, telephone number, E-mail address etc. of the compliance officer.

(For specimen of the Board Resolution, please refer to *Annexure III* at the end of this Study).

Under Regulation 7(3) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within one month of end of each half of the financial year, certifying compliance to ensure 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.

Any change in compliance officer shall be disclosed to stock exchange within 24 hours of occurrence of such change.

COMPANY SECRETARY IN PRACTICE

According to Section 2(25) of the Companies Act, 2013 “company secretary in practice” means a company secretary who is deemed to be in practice under sub-section (2) of Section 2 of the Company Secretaries Act, 1980.

Section 2(2) of the Company Secretaries Act, 1980 provides that 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,-

- (a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or
- (b) offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganization or winding up of companies; or
- (c) offers to perform or performs such services as may be performed by –
 - (i) an authorized representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,
 - (ii) a share transfer agent,
 - (iii) an issue house,
 - (iv) a share and stock broker,
 - (v) a secretarial auditor or consultant,
 - (vi) an adviser to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947, the Industries (Development & Regulation) Act, 1951, the Companies Act, the Securities Contracts (Regulation) Act, 1956, any of the rules or bye laws made by a recognized stock exchange, the Competition Act, 2002, the Foreign Exchange Management Act, 1999, or under any other law for the time being in force,
 - (vii) Issuing certificates on behalf of, or for the purposes of, a company; or
- (d) holds himself out to the public as a Company Secretary in practice; or
- (e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or
- (f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice; and the words “to be in practice” with their grammatical variations and cognate expressions, shall be construed accordingly.

Under section 6(1) of the Company Secretaries Act, 1980, no member of the Institute shall be entitled to practice whether in India or elsewhere unless he has obtained from the Council of the Institute a certificate of practice.

Categories of services specified by the Council under section 2(2)(f) of Companies Secretaries Act, 1980

Section 2(2)(f) of the Company Secretaries Act, 1980 says:

renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice;

The Council of the Institute has specified the following categories of Management, Advisory and Other Services, which may be rendered by a Company Secretary in Practice. Any of such services may be rendered by practicing members to corporations, bodies corporate, societies, trusts, associations, enterprises, undertakings, clubs, non-trading corporations, industrial co-operatives, co-operative societies, non-government organizations, local self-government bodies, estates, firms, small, medium and large industrial undertakings, entrepreneurs, investors, and other persons in carrying out their activities and operations:

- Providing all services in MCA-21 Systems including those relating to Front Office, Facilitation Centre, Filing Centre, and Local Registration Authority of Digital Signature Certificate Providers.
- Conceptualization, identification, crystallization of business enterprise, industrial project or business activity.
- Carrying out feasibility studies, preparation of project reports, proposals for business operations including setting up a new unit or enterprise, as well as expansion, or diversification and also representations, follow-up with financial institutions, Government and other authorities for procurement of the requisite approval, clearance or permission in respect of such proposals.
- Guidance and support in relation to collaborations, joint ventures, business agreements, arrangements, restructuring, contracts, tie-ups in India and abroad.
- Business planning, policy and management in all fields including manpower, recruitment, employment, industrial relations, human resource development, management information systems, marketing, publicity and public relations.
- Planning, supervision and carrying out of internal audit, systems audit, labour audit, management audit, operational audit, quality audit, social audit, environment audit and energy audit.
- Risk management of properties, profits, resources, know-how and operations.
- Management, planning, representation and protection of trademarks, patents and intellectual property service.
- Procurement and management of materials and inventories.
- Assessment, procurement and management of financial requirements and resources including project finance, working capital finance, forex management, loan syndication, portfolio management.
- Evaluation and management of deployment of funds in investments, assets and securities, loans, collaborations, tie-ups, joint-ventures.
- Formulating and implementing all activities relating to capital structure including creation, issue, offer, allotment, placement, and procurement, listing of shares, debentures, bonds, deposits, coupons, ADR, GDR, IDR and all types of financial instruments.
- Recovery consultant in banking and financial sector.
- Insurance advisor and other related activities.
- Acting as an arbitrator, mediator or conciliator for settlement of disputes or being on the panel of arbitrators or representing in arbitration, mediation or conciliation matters.
- Acting as advisor to investors, depositors, mutual fund unit holders and stakeholders;
- Acting as advisor in relation to intermediary in securities and commodities markets;
- Due diligence and legal services;
- Corporate governance services;
- Competition law and practice;
- Business process outsourcing, knowledge process outsourcing and legal outsourcing;

- Valuer, surveyor and loss assessor.
- Investigator, private liquidator, insolvency practitioner; operating agency.

Permissions Granted by General or Specific Resolution of the Council under Regulation 168 of Company Secretaries Regulations, 1982

Regulation 168 (1) prohibits a company secretary in practice from engaging in any business or occupation other than the profession of company secretary unless it is permitted by a general or specific resolution of the Council. As per regulation 168 (2), without prejudice to the discretion vested in the Council in this behalf, a Company Secretary in practice may act as a secretary, trustee, executor, administrator, arbitrator, receiver, appraiser, valuer, internal auditor, management auditor, management consultant or as a representative on financial matters including taxation and may take up an appointment that may be made by the Central or any State Government, Court of Law, Labour Tribunals, or any other statutory authority.

The Council has permitted the members in practice to engage in the following business or occupation under Regulation 168 of the Company Secretaries Regulations, 1982:

Permission Granted Generally

- (i) Private tutorship.
- (ii) Authorship of books and articles.
- (iii) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
- (iv) Holding of public elective offices such as M.P, M.L.A., M.LC.
- (v) Honorary office-bearership of charitable, educational or other non-commercial organisations.
- (vi) Acting as Justice of Peace, Special Executive Magistrate and the like.
- (vii) Teaching assignment under the Coaching Organization of the Institute or any other organization, so long as the hours during which a member in practice is so engaged in teaching do not exceed average four hours in a day irrespective of the manner in which such assignment is described or the remuneration is receivable (whether by way of fixed amount or on the basis of any time scale of pay or in any other manner) by the member in practice for such assignment.
- (viii) Valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.
- (ix) Editorship of professional journals.
- (x) Acting as ISO lead auditor.
- (xi) Providing Risk Management Services for non-life insurance policies except marketing or procuring of policies.
- (xii) Acting as Recovery Consultant in the Banking Sector.
- (xiii) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.
- (xiv) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practicing member does not hold substantial interest in the company.

The Council has in its resolution defined the term 'non-executive director' to mean an ordinary director who is required to attend the meetings of the Board or its committees only, is not paid any remuneration except the

sitting fees for attending the Board/Committee meetings and any remuneration to which he is entitled as ordinary director, and who devotes his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.

Resolution under regulation 168 of the Company Secretaries Regulations, 1982 allowing members in practice to carry out non-attestation services through the new business structure of Limited Liability Partnership.

The Council of the Institute has passed the following resolution under regulation 168 allowing Company Secretaries in Practice to become partners of LLP, the objects of which include areas which fall within the scope of non-attestation services of the profession of Company Secretaries or in any other business or occupation.

“Resolved that under regulation 168 of the Company Secretaries Regulations, 1982, the Council gives general permission to the members in practice to:

- (a) become passive partner of a limited liability partnership (LLP) the objects of which include carrying out non-attestation services which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that LLP;
- (b) become passive partner of LLP which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in that LLP.

For the purposes of the above resolution:

- (i) **“Attestation Services”** include services which require signing any certificate, document, report or any other statements relating thereto on behalf of a Company Secretary in Practice or a firm of such Company Secretaries in his or its professional capacity or which require signing anything that is required to be signed by a Company Secretary in practice.
- (ii) **“Non-attestation Services”** means services which are not attestation services.
- (iii) A **“passive partner”** means a partner of LLP who fulfils the following conditions:
 - (a) he must not be a designated partner;
 - (b) subject to the LLP agreement, he may make agreed contribution to the capital of LLP and receive share in the profits of the LLP; and
 - (c) he must not take part in the management of the LLP nor act as an agent of the LLP or of any partner of the LLP;

However, none of the following activities shall constitute taking part in the management of the LLP:

- (1) Enforcing his rights under the LLP agreement (unless those rights are carrying out management function).
- (2) Calling, requesting, attending or participating in a meeting of the partners of the LLP.
- (3) Approving or disapproving an amendment to the partnership agreement.
- (4) Reviewing and approving the accounts of the LLP;
- (5) Voting on, or otherwise signifying approval or disapproval of any transaction or proposed transaction of the LLP including –
 - (a) the dissolution and winding up of the LLP;
 - (b) the purchase, sale, exchange, lease, pledge, mortgage, hypothecation, creation of a security interest, or other dealing in any asset by or of the LLP;
 - (c) a change in the nature of the activities of the LLP;
 - (d) the admission or removal of a partner of the LLP;

- (e) transactions in which one or more partners have an actual or potential conflict of interest with one or more partners or the LLP;
- (f) any amendment to the LLP agreement;
- (iv) a member shall be deemed to have a “substantial interest” in an LLP if he is entitled at any time to not less than 25% of the profits of such LLP.”

Permission to be Granted Specifically

Members of the Institute in practice may engage in the following categories of business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council in each case:

- (i) Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.
- (ii) Interest in agricultural and allied activities carried on with the help, if required, of hired labour.
- (iii) Editorship of journals other than professional journals.

APPOINTMENT OF A COMPANY SECRETARY IN PRACTICE

SECRETARIAL AUDIT

Secretarial audit is a comprehensive audit to check whether the concerned company is complying with the provisions of rules, regulations and procedures mentioned in various laws. Secretarial audit is carried out by an independent professional to ensure that the company has complied with the legal and procedural requirements and keeps proper books, records etc. It is essentially a mechanism to monitor compliance with the requirements of stated laws and processes.

Timely examination of compliance reduces risks as well as potential cost of non-compliance and also builds better corporate image. Secretarial audit establishes better compliance platform by checking the compliances with the provisions of various statutes, laws, rules & regulations, procedures by an independent professional to make necessary recommendations/remedies. The primary objective of compliance management backed secretarial audit is to safeguard the interest of the Directors & officers of the companies, shareholders, creditors, employees, customers etc.

The Companies Act, 2013 has introduced the Secretarial Audit as a new class of audit in addition to Statutory Audit, Internal Audit and Cost Audit prescribed in the Act. Section 204 of the Act read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 deals with provisions relating to Secretarial Audit.

APPLICABILITY

According to Sub-Section (1) of Section 204 of the Act, every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes the other class of companies as under:

- (a) every public company having a paid-up share capital of rupees fifty crore or more; or
- (b) every public company having a turnover of rupees two hundred fifty crore or more.

*The format of Secretarial Audit Report shall be in **Form MR.3**. Thus private companies have been exempted from the provisions of the concept of secretarial audit. Secretarial Audit is extensively discussed in the paper ‘Secretarial Audit, Due Diligence and Compliance Management’.*

Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014, secretarial auditor is required to be appointed by means of resolution at duly concerned Board meeting of companies.

Duties, Rights and Powers of Company Secretary in Practice conducting Secretarial Audit:

According to Section 204 (2) of the Act, 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. Further, a company secretary in practice conducting secretarial audit has been granted similar powers and rights as that granted to statutory auditor. [Section 143(14) of the Act].

The report of Board of Directors prepared under Section 134(3) of the Act shall include explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the company secretary in practice in his secretarial audit report. [Section 204 (3) of the Act].

Punishment for Default

According to Section 204(4) of the Act, if a company or any officer of the company or the company secretary in practice, contravenes the provisions of section 204 of the Act, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than rupees one lakh but which may extend to rupees five lakh.

Duty to report fraud

The provision of Section 143 mutatis mutandis apply to company secretary in practice in conduct of secretarial audit. Section 143(12) provides, if an auditor company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed

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

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

If company secretary in practice conducting Secretarial Audit under section 204 of the Act do not comply with such provisions, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty five lakh rupees. [Section 143(15) of the Act].

Reporting Requirements

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that the format of the Secretarial Audit Report shall be in **Form No.MR. 3**. The scope of reporting is very broad and the Company Secretary in practice has to ensure compliances of following statutory provisions in addition to Secretarial standards issued by The Institute of Company secretaries of India.

- (1) The Listing Regulations / SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015;
- (2) The Companies Act, 2013 (including the rules made thereunder);
- (3) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder;
- (4) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
- (5) 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;

- (6) The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):
- (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
 - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
 - (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
 - (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
 - (f) 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;
 - (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
 - (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
- (7) any other laws as may be applicable specifically to the company.

Consultation meets were held with the Corporates (through Company Secretaries in employment) as well as Company Secretaries in practice, and taking into consideration the views emerging therefore, the Council of the ICSI at its 226th meeting held on November 21, 2014 decided on the Scope of Secretarial Audit includes:

- Reporting on compliance of Five laws as mentioned in form MR-3
 - Companies Act, 2013,
 - Securities Contracts (Regulation) Act, 1956 ('SCRA'),
 - Depositories Act, 1996,
 - Foreign Exchange Management Act,
 - Securities and Exchange Board of India Act, 1992;
- Reporting on compliance of 'Other laws as may be applicable specifically to the company' which shall include all the laws which are applicable to specific industry for example for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry; likewise for a company in petroleum sector- all laws applicable to petroleum industry; similarly for companies in pharmaceutical sector, cement industry etc.
- Examining and reporting whether the adequate systems and processes are in place to monitor and ensure compliance with general laws like labour laws, competition law, environmental laws.

The provisions relating to audit of accounts and financial statement of a company is dealt in the Statutory Audit, and that relating to taxation is dealt in Tax Audit, the Secretarial Auditor may rely on the reports given by statutory auditors or other designated professionals.

However, Secretarial Auditor is expected to report on the Secretarial Compliance of these laws.

The Institute has published 'Guidance Note on Secretarial Audit' for details, the students may refer to the Guidance Note.

Procedure for Appointment of Company Secretary in Practice for Secretarial Audit

The following procedure should be adopted in this regard:

1. Before appointment of Company Secretary in practice ensure that individual to be appointed, satisfies the definition of company secretary in practice under Section 2(25) of Companies Act, 2013, i.e., he is a member of the Institute of Company Secretaries of India and is not in full-time employment anywhere.
2. Further ensure that individual proposed to be appointed, holds a certificate of practice from the Institute of Company Secretaries of India and that certificate is valid.
3. Convene a Board meeting after giving notice to all the directors of the company in accordance with Section 173 of the Companies Act, 2013.
4. Consider the proposal to appoint company secretary in practice for secretarial audit and pass Board resolution in the meeting, appointing company secretary in practice for secretarial audit. (For specimen resolution for appointment of company secretary in practice for issue of secretarial audit, please see *Annexure IV* to this study).
5. The resolution should mention the remuneration to be paid to such individual as company secretary in practice or authorize the Managing Director/any other director to fix the remuneration.
6. The appointment shall be made up to the conclusion of the annual general meeting held after such appointment.

REMOVAL OF COMPANY SECRETARY IN PRACTICE

A Company Secretary in practice can be removed *suo-motu* by the engaging Company or if found guilty of professional misconduct in the manner specified in Schedule I of the Company Secretaries Act, 1980 by the Institute and his name is removed from the Register of Members.

A Board resolution to this effect is to be passed at the Board meeting of the Company. In case the company is listed company, then notify such removal to the stock exchange immediately after Board meeting.

FUNCTIONS OF COMPANY SECRETARY IN PRACTICE

The educational background, knowledge, training and exposure that a Company Secretary acquires makes him a versatile professional capable of rendering a wide range of services to companies of all sizes, other commercial and industrial organizations, small scale units, firms, etc. on retainership or job basis. The profile of services, which a Company Secretary in Practice can render, are listed below:

Project Planning

- Promotion, formation and incorporation of companies, and matters related therewith including choice of type of company, availability of name, drafting of Memorandum and Articles of Association and other documents, their stamping and registration with the Registrar of Companies.
- Identification of Project.
- Selection of location for the project and advising on various incentives available.
- Selection of Land, Search of titles, and getting required approvals for carrying out industrial/commercial activities on such land.
- Advising on size of the project, drawing schedule of implementation and follow up from the stage of conceiving of project upto the commencement of commercial production.
- Advising on expansion and modernization.
- Drafting of agreements, conveyances, bonds, etc. relating to projects and ventures.

Raising of Resources/Financial Services

- Preparation of Project Reports and Feasibility Studies.
- Syndication of long term and short term loans from financial institutions, banks and other agencies.
- Loan documentation, registration of charges, search and status report.
- Advisor/Consultant in issue of shares and securities.
- Drafting of prospectus/offer for sale/letter of offer/other documents related to issue of securities, and obtaining various approvals in association of lead managers.
- Listing of securities/delisting of securities with recognized stock exchanges.
- Private placement of shares and securities.
- Buy back of shares and securities.
- Raising of funds from international markets – ADR/GDR/ECB.
- Investment subsidies, sales tax and other incentives.
- Liaisoning with financial institutions, banks, other lenders, and stock exchanges, and furnishing periodical returns, reports and information required by them.
- Advising sick companies with respect to the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, and drafting of rehabilitation schemes.
- Advisor and Consultant in raising funds from Money Market and Capital Market.
- Advising and guiding in ascertaining Stamp Duty, Payment of Duty and other related services under Central and State Stamp Laws.

Foreign Collaboration and Joint Ventures Abroad

- Advising on Foreign Collaborations.
- Advising on setting up of subsidiaries in India.
- Advising on setting up of joint ventures abroad or setting up of subsidiaries abroad.
- Drafting of Memorandum of Understanding, Promoters' Agreement, Shareholders' Agreement and Commercial Agreements.
- Drafting of Articles of Association of Joint Venture, Feasibility Report and Project Report.

Corporate Restructuring

- Planning strategies for amalgamation/merger, acquisition, takeover, spin off, reconstruction, reorganization, restructuring and winding up of companies, forward and backward integration.
- Change of name, change of objects and shifting of registered office of the company.
- Drafting schemes of amalgamation or arrangement, public offer for acquisition or takeover, and Promoters' Agreement.
- Complying with necessary legal and procedural requirements.
- Advising the management on post merger, acquisitions or restructuring strategies.

Corporate Laws Advisory Services

Companies Act:

- Filing, registering, representing, attesting or verifying any document including forms, returns and applications by or on behalf of the Company as an authorized representative.
- Compilation of status/search reports for companies, banks and financial institutions.
- Pre-certification of e-forms and their filing with the Registrar of Companies. [Students may refer ICSI Publication. 'Referencer on pre-certificate of e-form'.]
- Advising on legal and procedural matters under the Act.
- Maintenance of secretarial records, statutory books and registers.
- Acting as Secretarial Auditor, Advisor or Consultant.
- Filing of petitions before the Company Law Board/NCLT/NCLAT.
- Appearing as authorized representative before the Company Law Board/NCLT/NCLAT, Central Government, Regional Director and Registrar of Companies.
- Acting as Scrutinizer for postal ballot voting process.

Competition Act/Consumer Protection Act:

- Appearing as authorized representative before the Competition Commission/Competition Appellate Tribunal/Consumer Forums.
- Advising on dealership agreements, trade practices, sales promotion schemes, marketing and sales campaigns.
- Advising on Competition policy and strategy of the company.

Foreign Exchange Management Act:

- Advising on legal and procedural matters falling under FEMA.
- Advising Non-Resident Indians regarding investment in India and repatriation of such investments and returns thereon.
- Obtaining RBI/FIPB/SIA approvals.

Depositories Act:

- Conducted of Internal Audit of Operations of Depository Participants.
- Appearing as authorised representative before Securities Appellate Tribunal. State Laws:
- Advising on legal and procedural matters on various laws of different states on Pollution Control, Co-operative Societies, Public Trusts, Non Trading Corporation, Land Ceilings, Sales Tax, Revenue Laws etc.

Appearing before Regulatory Authorities:

- Appearing as authorised representative before the Central Government, Company Law Board/National Company Law Tribunal/Appellate Tribunal, Regional Director, Registrar of Companies, Consumer Forums, Securities Appellate Tribunal, Central Excise Authorities, Wealth Tax Authorities, Customs Authorities, Income-tax Authorities and Appellate Tribunals, Central Electricity Regulatory Commission, Gujarat Electricity Regulatory Commission, Telecom Disputes Settlement and Appellate Tribunal, BIFR, etc.

Tax Planning and Management

Income tax:

- Computation of tax payable, filing of returns of income of the company and its directors obtaining permanent account numbers.
- Computation and payment of advance tax.
- Computation of deduction of tax at source, filing of forms and issue of TDS certificates.
- Acting as authorized representative before the Income Tax authorities during assessment proceedings, furnishing of records/documents/ explanations called for.
- Filing of appeals, claiming refunds getting the transactions registered.
- Advising on tax planning and tax management, availing tax concessions, incentives, reliefs and tax benefits.

Excise:

- Acting as authorized representative before central excise authorities.
- Valuation and classification of goods.
- Assessment of duty and obtaining refunds.
- Complying with formalities for removal of excisable goods for home consumption and exports.
- CENVAT procedures.
- Advising on search, seizure etc.
- Documentation.

Customs:

- Acting as authorized representative before customs authorities and the Appellate Tribunal.
- Assisting in clearance of import/export classification of goods.
- Valuation of goods and assessment of customs duty and obtaining refunds.
- Documentation.
- Availing duty exemptions and drawback benefits.

Service Tax:

- Registration with tax authorities.
- Advising on Applicability, rate and payment of service tax.
- Filing of returns with the authorities.
- Claiming exemption from service tax.
- Advising on various procedural matters relating to service tax.

Export-Import and Forex Dealings

- Advising on Foreign Trade policy and procedures.
- Export-Import documentation.
- Advising on Letters of Credit, and drafting suitable conditions in LOCs.

- Advising and assisting in receipt and remittance of funds in foreign currency.

Arbitration and Conciliation

- Advising on arbitration, negotiations and conciliation.
- Drafting Arbitration/Conciliation Agreement/Clauses.
- Acting as Arbitrator/Conciliator in domestic and international commercial disputes.

Intellectual Property Rights and WTO

- Advising on matters relating to Intellectual Property and TRIPS Agreement of WTO.
- Advising on Intellectual Property Licensing and drafting of agreement.
- Acting as registered Trade Mark Agent.
- Advising on passing off/infringement matters.
- Advising on registration of patents, trade marks and copyrights.
- Valuation of Intellectual Property Rights.
- Advising on anti-dumping matters – Computation of Normal Value, Sale Price, Comparisons and Appraisals.

Personnel and other Matters

- Manpower planning and development.
- Recruitments, fixation of terms of appointment and devising pay packages.
- Advising on matters with respect to labour and industrial laws, maintenance of registers and records, filing of various forms and registers, and follow up with the authorities.
- Providing necessary inputs to lawyers to add value to the proceedings under Conventional litigation.
- Advising in Insurance matters.

Issue of Certificates under Various Statutes

Companies Act/Stock Exchanges:

- Making a verified declaration of compliances for obtaining a certificate of commencement of business/commencement of other business.
- Making the statutory declaration that all requirements of the Companies Act and rules thereunder have been complied with in respect of registration of a company and matters precedent and incidental thereto.
- Giving declaration that the Memorandum and Articles of Association have been drawn up in conformity with the provisions of the Act and compliance of provisions with respect to registration or matters incidental thereto.
- Signing of annual returns of companies.
- Certification regarding dispatch of share certificate after transfer etc. under the Listing Regulations.
- Certification of statement of amounts credited/to be credited to Investor Education and Protection Fund.
- Certificate on appointment of Managing Director/Whole-time Director/ Manager.
- Certification regarding compliance with Private Limited Company.

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- Issuing certificate to listed company to the effect that all refund orders/ certificates issued were dispatched within prescribed time and manner and securities were listed on the stock exchanges and specified in the offer document.
- Issuing a certificate to a listed company regarding compliance of conditions of corporate governance as stipulated in Regulation 34(3) read with Schedule VE of the listing regulations.

Export-Import Policy:

- Various certificates under the Foreign Trade Policy and Procedures. Foreign Exchange Management Act:
- Various certificates for exchange control purposes under FEMA. Charter Policy 1986 of the Deptt. of Agriculture and Co-operation:
- Certifying particulars of the company chartering foreign fishing vessels.

ROLE OF COMPANY SECRETARY IN PRACTICE

The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice. While the Companies Act, 2013 has opened up a significant area of practice for Company Secretaries, it casts immense responsibility on Company Secretaries, and poses a great challenge to justify fully, the faith and confidence reposed in them.

Following are the some of the areas where practicing company secretaries can excel:

1. Incorporation of company [Section 7]

Section 7 lays down the procedure for incorporation of a company. A company was incorporated by submitting memorandum and articles duly signed along with a declaration in prescribed form to the effect that the requirements of the Act in respect of registration have been complied with.

Section 7 (1) of the Act provides that there shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:-

- (a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
- (b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or **company secretary in practice**, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with. Therefore, company secretary in practice along with other professionals has vast scope at the time of incorporation of a company.

2. Signing of Annual Return [Section 92]

Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding-

- (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- (b) its shares, debentures and other securities and shareholding pattern;
- (c) its indebtedness;
- (d) its members and debenture-holders along with changes therein since the close of the previous financial year;

- (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- (f) meetings of members or a class thereof, Board and its various committees along with attendance details;
- (g) remuneration of directors and key managerial personnel;
- (h) 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;
- (i) matters relating to certification of compliances, disclosures as may be prescribed;
- (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
- (k) such other matters as may be prescribed,

and signed by a director and the **company secretary**, or where there is no company secretary, by a **company secretary in practice**:

Provided that 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.

(2) The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a **company secretary in practice** in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

As per Companies (Management and Administration) Rules, 2014, such prescribed class means a listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more.

Section 92(6) of the Act provides that 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.

Thus, concerned company secretary in practice shall remain vigilant while certifying the annual return of the companies. He should disclose all facts correctly, adequately and in compliance with all provisions of the Companies Act, 2013.

3. Appointment as Scrutinizer

Every listed company other than a company referred to in Chapter XB or XC of the SEBI (ICDR) Regulations, 2009 or a company having not less than one thousand shareholders, provide to its members facility to exercise their right to vote at general meetings by electronic means;

- the Board of directors to appoint one scrutinizer, who may be Chartered Accountant in practice, Cost Accountant in practice, or **Company Secretary in practice** or an advocate or any other person who is, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner.

The company secretary in practice has a very important role as a scrutinizer in case of voting through electronic means.

4. Report on annual general meeting [Section 121]

Every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the rules

made thereunder. A copy of this report shall be filed with the Registrar. Company Secretary is authorized to sign the report on every Annual General Meeting along with two directors one of whom shall be the Managing Director if there is one.

5. Secretarial Audit for Bigger Companies [Section 204]

Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.

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.

This exclusive provision of secretarial audit report shall help compliance on the part of listed companies to a better level. It shall curb fraudulent manipulations by listed companies and related group companies. The Act has made it obligatory to comment the Board of Directors on the adverse remarks of a Practicing Company Secretary in his secretarial audit report. This will certainly help in enhancing the usefulness of secretarial auditing. Secretarial audit would provide great scope to practicing company secretaries as well.

6. Company Liquidators [Section 275]

Section 275 provides for appointment of official liquidator or liquidators as Provisional Liquidator or Company Liquidators for the purpose of winding up of a company by the Tribunal from amongst the insolvency professionals registered under Insolvency and Bankruptcy Code, 2016.

7. Professional assistance to Company Liquidator [Section 291]

The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including Company Secretaries on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under the Act.

8. Qualifications of President and Members of Tribunal [Section 409]

The constitution of National Company Law Appellate Tribunal (NCLT) shall widen the scope of services of practicing company secretaries. A Company Secretary in practice is eligible to become a Technical Member of National Company law Tribunal, if he is practicing for at least fifteen years.

9. Right to legal representation [Section 432]

Section 432 of the Act enables a party to any proceeding to appear in person or to authorize professionals including company secretaries to present the case before the Tribunal or the Appellate Tribunal.

10. Merger and amalgamation of Companies [Section 232]

Filing of statement every year until completion of scheme [Section 232(7)]:

Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a **company secretary in practice** indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

11. Registered valuer

In terms of the provisions of Section 247 of the Companies Act, 2013 where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a Valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company. The requirement of Registered Valuers will definitely enhance professional opportunities for both the Company Secretaries and other professionals as well.

AUDIT OF VARIOUS INTERMEDIARIES

- (i) Under Regulation 55A of SEBI (Depositories and Participants) Regulations, 1996, a practising company secretary is authorized to issue quarterly certificate with regard to reconciliation of the total capital issued, listed and capital held by depositories in dematerialized form, details of changes in share capital during the quarter, and in-principle approval obtained by the issuer from all the stock exchanges where it is listed.
- (ii) Further, a Practising company secretary is authorized to conduct internal audit of intermediaries like portfolio manager, stock broker/ clearing member/ trading member, credit rating agency, depository participants.
- (iii) SEBI has authorised the practicing company secretaries to carry out the audit of Investment advisers on yearly basis under regulation 19 (3) of SEBI (Investment Advisers) Regulations, 2013.
- (iv) A Practising Company Secretary is authorize to conduct concurrent audit of Depository Participants which covers audit of the process of demat account opening, control and verification of Delivery Instructions Slip.

ELIGIBLE TO BE AN INDEPENDENT DIRECTOR

Section 2(47) of the Act states that Independent director means an independent director referred in Section 149(5) of Companies Act, 2013. The Act makes it mandatory for every listed public company to appoint at least one-third of the total strength as independent directors. Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 has prescribed certain class or classes of companies which shall have at least two directors as independent directors.

Manner of selection of Independent Director

Section 150 (1) of the Act, indicates that the independent directors may be selected from a data bank of eligible and willing persons maintained by any Institute or Association as may be prescribed by Central Government. For this purpose practicing company secretaries are one of the suitable and deserved professionals in the corporate sector. This section further stipulates that the appointment of independent directors has to be approved by members in a General meeting and the explanatory statement annexed to the notice must indicate justification for such appointment.

OTHER RECOGNITIONS FOR COMPANY SECRETARIES

1. Minutes of the proceedings [Section 118]

Where the minutes have been kept in accordance with sub-section (1) of section 118 of the Act, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

Apparently, now the Practising Company Secretary is to be appointed only by passing a resolution at the meeting of the Board of the company. The provisions call for timely & proper appointment of Practising Company Secretary so that there is no scope of ambiguity and hence removal/termination, if any, of such Practising Company Secretary has also to be through same authority.

2. Adjudication of penalties [Section 454]

In case of failure to comply with certain provisions of the Act, heavy monetary penalties are imposed. The determination of quantum of penalties will be decided by adjudicating officers. Section 454 provides for appointment of adjudicating officers for adjudging penalty under the provisions of Companies Act. The adjudicating officer shall have power by an order to impose penalty on the company and the officer who is in default for non-compliance or default after giving a reasonable opportunity of being heard. The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and

the officer who is in default. Any person aggrieved by an order will have a right to prefer an appeal to the Regional Director.

This would greatly enhance role of Company Secretaries both in employment as well as in practice as they would be called upon to represent the companies before the Registrar/Regional Director in such matters.

3. Duties and Liabilities of Management

The role and responsibilities of the management (Board of Directors) have been specifically laid down in the Act. Since the Board of Directors are involved in the enhancement of the business, they have little time to comply with the provisions of Companies Act and other Acts properly, certainly they would look forward to the advice and assistance of professionals like Company Secretaries in the discharge of their duties.

4. Enhanced Disclosures

To promote good governance, detailed disclosures are contemplated under the Act, for compliance of which the companies would look forward to professionals including Company Secretaries.

5. Insolvency, Rehabilitation, Liquidation and Winding Up

Revised framework for regulation of mergers and amalgamations, insolvency, rehabilitation, liquidation and winding up of companies offers great scope for Companies Secretaries not only to act as liquidator/administrator but also to represent the various stakeholders before the Tribunal.

DESIGNATION TO BE USED BY MEMBERS IN PRACTICE

Under Section 7 of the Company Secretaries Act, 1980, a member in practice shall use the designation of a Company Secretary and shall not to use any other designation, whether in addition thereto or in substitution therefor. However, use of the prefix 'practising' before the designation 'Company Secretary' would not offend Section 7. Similarly, use of the suffix 'in whole-time practice' or 'in practice' after the designation 'Company Secretary' would also not offend Section 7. Further, use of any description or letters to indicate membership of any other Institute in India or elsewhere is permissible, if recognized by the Council. Any other qualification possessed by a member in practice is also not prohibited to be used – say M.Com, M.A., M.B.A., A.C.A., A.I.C.M.A., etc. The Council has recognized membership of the Institute of Chartered Accountants of India and Institute of Cost Accountants of India and Bar Councils for purposes of allowing members of the Institute to use the relevant statutory descriptions of such bodies, provided members are not holding certificates of practice of the Institute or using the description of "Company Secretary". Use of designations like "Company Law Consultant", "Corporate Law Advisor", "Corporate Advisor", "Investment Advisor", "Management Consultant" is prohibited.

PREFIX OF CS

The Council of the Institute in its 173rd meeting held on June 23-24, 2007 has decided that a member of the Institute may prefix CS to his name in order to distinguish himself from other professionals and to create brand image of the CS profession, for example: CS. "A", ACS

LOGO FOR MEMBERS

As a part of brand building, a logo for Members has been specially designed with a view to enhance the visibility of the CS profession.



Concept

The letters 'CS' to be used by the members as a prefix before their names; shares a direct and umbilical relationship with the identity of the Institute. A compact unit in itself, with the central arrow of growth and excellence, it represents stability and integrity, which are the hallmark of the profession.

Set a sober deep blue colour, it represents a very confident and upright professional.

SPECIMEN OF BOARD RESOLUTION APPOINTING COMPANY SECRETARY

RESOLVED THAT Shri, who is an Associate Member of the Institute of Company Secretaries of India and has had four years' experience in a listed company, be and is hereby appointed as Company Secretary on the terms and conditions contained in the letter of appointment, draft whereof was laid on the table of the meeting, approved by the meeting and initialled by the chairman of the meeting as a mark of identification; and

RESOLVED FURTHER THAT the chairman and managing director of the company, Shri....., be and is hereby authorised to sign the letter of appointment of the Company Secretary, on behalf of the Board of directors of the company.

RESOLVED FURTHER THAT Shri, be and is hereby appointed Company Secretary on the terms and conditions contained in the agreement, draft whereof was laid on the table of the meeting, approved by the meeting and initialled by the chairman of the meeting as a mark of identification; and

RESOLVED FURTHER THAT the Chairman and Managing Director of the company, Shri, be and is hereby authorised to sign, on behalf of the Board, the agreement with the Company Secretary.

RESOLVED FURTHER THAT Shri....., be and is hereby appointed Company Secretary on the following terms and conditions:

- (a) Salary.....` per month in the pay scale of `
- (b) Other allowances` per month.
- (c) Company's leased accommodation for residential purpose.
- (d) Company's car with driver for company's work.
- (e) One Mobile and one telephone line at his residence at company's cost for company's work. Long distance personal calls will be payable by him.
- (f) Leave as per company's leave rules.
- (g) Provident Fund Contribution as per company's rules.
- (h) Superannuation Fund Contribution as per company's rules.
- (i) Gratuity as per rules of the Company.
- (j) Leave encashment as per company's rules.
- (k) Determination of service on three months notice by either party.

RESOLVED FURTHER THAT the Chairman and Managing Director, Shri, be and is hereby authorised to sign the letter of appointment of the Company Secretary, on behalf of the Board of directors of the company.

BOARD RESOLUTION FOR APPOINTMENT OF COMPLIANCE OFFICER

“RESOLVED THAT the company do hereby appoint Mr., Company Secretary of the company, as Compliance Officer of the company who shall be responsible in compliance with the provisions of the Companies Act, 2013, Rules made thereunder and SEBI Listing Regulations.”

SPECIMEN RESOLUTIONS FOR APPOINTMENT OF COMPANY SECRETARY IN PRACTICE FOR SECRETARIAL AUDIT

Board Resolution

“RESOLVED THAT M/s ABC & Co., Company Secretaries be and is hereby appointed as secretarial auditor of the company in terms of the provisions of Section 204 of the Companies Act, 2013 and to hold the office till the conclusion of the next Annual General Meeting on such remuneration as may be determined by the Board and agreeable to them.”

Draft Resolution for appointment of a Company Secretary in Practice at Annual General Meeting for Special Business

To consider and if thought fit, to pass with or without modifications the following resolution as ordinary resolution:-

“RESOLVED THAT M/s ABC & Co., Company secretaries within the meaning of Section 2(25) of the Companies Act, 2013 be and is hereby appointed as secretarial auditor of the company on the terms of remuneration as agreed by the Board of directors and the Board of directors of the company be and is hereby authorized to vary the terms of remuneration and fill the vacancy in his office, if any, caused from the conclusion of this annual general meeting until the conclusion of next annual general meeting.”

Explanatory Statement

Under the provisions of section 204(1) of the Companies Act, 2013, the company is required to obtain secretarial audit report from a practicing company secretary which shall be annexed with the report of Board of Directors.

Mr.....is a practicing company secretary of M/s ABC & Co., Company Secretaries has consented to be appointed as secretarial auditor for the financial year ended....., Therefore, the company may appoint him from the conclusion of this annual general meeting until the conclusion of next annual general meeting by passing the proposed ordinary resolution as set out in the notice of the meeting. None of the directors of the company is concerned or interested in the proposed resolution.

LESSON ROUND UP

- Company Secretary is an officer of the company responsible for compliance by the company with the provisions of the Companies Act 2013 and various other corporate taxation industrial and economic laws applicable to companies in general
- Under listing agreement clause 49(III) (A) (6), the company secretary shall act as the secretary to the audit committee in case of a listed company
- According to clause (c) of Sub-section (1) of Section 2 of the Company Secretaries Act, 1980, a Company secretary means a person who is a member of the Institute of Company Secretaries of India.
- The Company Secretary has relationship with Board of the company, Trade union, Auditors, shareholders, Government and Community etc.
- Companies Act 2013 has prescribed some duties and powers to be practiced by the Company Secretary.
- Section 2(51) of the Companies Act 2013 defines the Company Secretary as a “key managerial personnel”
- According to section 203 of the Companies Act 2013 the Company Secretary is required to be mandatorily appointed in every company belonging to such class or classes of the companies as may be prescribed in rules.
- Company Secretary is not managerial personnel for the purpose of restriction on remuneration.
- Section 2(25) of the Companies Act defines a “company secretary in practice” means a Company Secretary who is deemed to be in practice under sub section (2) of section 2 of the Company Secretaries Act 1980.
- A Practicing Company Secretary can render a plethora of services as listed in the Lesson.

SELF TEST QUESTIONS

1. Define Company Secretary. What are the functions of Company Secretary in practice?
2. Draft a Resolution for appointment of a Company Secretary.
3. What are the legal provisions for appointment of company secretaries?
4. Write down the procedure for removal of a Company Secretary.
5. What are the statutory duties and liabilities of a Company Secretary?

Lesson 10

Meetings

LESSON OUTLINE

- Collective decision making forums
- Division of powers between shareholders and directors
- Responsibility and accountability, delegation of powers
- Procedure for holding Board Meetings
- Preparation of notices and agenda papers for Board/Committee meetings
- Procedure for passing Board resolutions by circulation
- Procedure for holding statutory Meeting, Annual general Meetings, extraordinary general meetings, class meetings
- Procedure for conducting a poll
- Procedure for passing a resolution through postal ballot
- Voting through electronic means in general meetings
- Procedure for adjournment of meeting.
- Practical Aspect of Drafting Resolutions and minutes
- Secretarial Standard 2
- Annexures – Specimen Notice/Resolution
- LESSON ROUND UP
- SELF TEST QUESTION

LEARNING OBJECTIVES

A company, being a legal entity, cannot act by itself. It, therefore, expresses its will or takes its decisions through Resolutions passed at validly held Meetings. Determining what constitutes a Meeting is therefore an important issue. A Meeting has been defined as “coming together of two or more persons face to face so as to be in each other’s presence or company”. [*In Re. Associated Color Laboratories Ltd.* (1970) 12 D.L.R.].

The decision-making powers of a company are vested in the Members and the Directors and they exercise their respective powers through Resolutions passed by them. The will of members of a company is expressed through Resolutions passed at general meetings. Similarly, the will of the governing body of the company (i.e. its Board of Directors) is expressed through Resolutions at meetings of the Board or those passed by circulation. General Meetings of the Members provide a forum for them to express their will with regard to the management of the affairs of the company. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures. In this lesson, you will learn about the procedural aspects relating to meetings.

COLLECTIVE DECISION MAKING FORUMS

A company, though an artificial person, is a legal person having its entity separate from its members. It is capable of acting in its own name, entering into contracts. It is capable of owning and holding property in its own name, sue others and to be sued by others in its name. Despite all these powers, since it is not a natural person it expresses its will or takes its decisions through resolutions passed at the meetings of either its directors, who manage, control and direct the business of the company or of the shareholders who ultimately own the company.

DIVISION OF POWERS BETWEEN SHAREHOLDERS AND DIRECTORS

The powers relating to the affairs of a company are divided between the Board and shareholders of the company. Every public company should be headed by an effective board which can both lead and control the business. The Board of Directors is called 'the directing mind and will of the company'. Shareholders are responsible for electing board members and it is in their interest to see that the boards of their companies are properly constituted and not dominated by any one individual. It is a well-settled principle of company law that shareholders cannot interfere with directors' powers.

The Board of directors is the principal organ of a company. The management of the affairs of the company is vested in the Board and all powers excepting those which are specifically reserved for the general meeting by the Act or the articles or memorandum or otherwise must be done by the Board. The directors of a company can do whatever the company can do subject to the restrictions imposed in law and the articles of the company. Section 179 of Companies Act 2013 recognises this principle and vests in the Board of directors, as a governing body and the supreme managerial organ of a company, general powers of management of a company, subject, however, to the exceptions mentioned in that section. The Section says; 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 authorised to exercise and do.

The main sources of directors' powers are (a) the law; (b) the memorandum and articles of association of the company; and (c) resolutions passed by the company's members at general meetings. This supremacy is no doubt subject to two limitations, namely, first, that the Board shall not do anything which is required to be done by the shareholders; and second, anything done by the Board should be in accordance with the provisions of the law, memorandum or articles of the company. Thus, the Board is the custodian of the interests of the company and its stakeholders. When powers are vested in the Board of directors by the articles of association of a company, the shareholders cannot interfere with them. If the shareholders are dissatisfied with what the directors do, their remedy is to remove them in the manner provided by the Act or the articles. But so long as the board of directors exists and particular powers are vested in it by the articles, they are entitled to exercise those powers without interference by the shareholders and it is irrelevant whether the shareholders approve of what the directors have done or not. *Jagdish Prasad v. Paras Ram* (1942) 12 Com Cases 21 (All): AIR 1941 All 360

The directors of a company are collectively referred to in the Companies Act as the "Board of directors" or "Board". "Board of directors" or "Board", in relation to a company, means the Board of directors of the company. Except where individual directors are entrusted with specific powers by the Board, the powers are to be exercised by the directors collectively. The Board is collectively responsible for the management and conduct of the business of the company. Each and every act which a company is required to do under the provisions of the Act including the maintenance of books of account, minute books, etc, is the collective responsibility of the board of directors as the general administration of the company vests in the board.

The ultimate power of decision is given to members assembled in general meeting. A transaction by the directors which is beyond their own powers but within the powers of the company can be ratified by a resolution of the company in a general meeting, provided that the shareholders have knowledge of the facts relating to the transaction to be ratified or the means of knowledge are available to them and a company may by a resolution at a subsequent

meeting ratify business which it purported to transact at a meeting informally called.

In *John Shaw & Sons (Salford) Ltd v. Shaw* (1935) 2 KB 113, Green LJ said: “The only way in which the general body of the shareholders can control the exercise of the powers vested by the articles in the directors is by altering the articles, or, if opportunity arises, under the articles by refusing to re-elect the directors of whose action they disapprove. They cannot themselves usurp the powers which by articles are vested in the directors, nor can the directors usurp the powers vested by the articles in the general body of the shareholders.”

RESPONSIBILITY AND ACCOUNTABILITY

Boards of Directors are responsible for the governance of their companies and accountable for the resources entrusted to it by the shareholders. A system of good corporate governance promotes relationships of accountability between the board, the management and the auditor. It holds the management accountable to the board and the board accountable to the shareholders. The Board is accountable towards the shareholders in maximizing shareholders' welfare. The Directors should not abuse their powers and further ensure that they act in the best interests of the company in its broad sense. The responsibilities of the board include setting the company's aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meetings.

The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place.

DELEGATION OF POWERS

Subject to the provisions of the Act, all powers which the company is authorised to exercise and do can be exercised by the Directors either at a Meeting [Section 173] or by Resolutions passed by circulation [Section 175] or by delegating the same to Committees or to the Managing Director or other principal officers [Proviso to 179(3)] or others in accordance with the provisions of the Act and the Articles.

Powers to be exercised only at Board Meetings

The powers that may be exercised by the Board only by means of a Resolution passed at a Meeting, as prescribed by Section 179(3), are:

- (a) to make calls on shareholders in respect of money unpaid on their shares;
- (b) to authorise 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 [Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014].

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In case of section 8 companies, matters referred to in clauses (d), (e) and (f) may be decided by the Board by circulation instead of at a meeting. (MCA notification dated June 5th, 2015)

Board may, 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, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

The Act has also prescribed certain other items of business which can be transacted by the Board only at Meetings. An illustrative list of such items is given below:

- (a) Buy back through Board Resolution [Section 68(2)];
- (b) Filling casual vacancies on the Board [Section 161(4)];
- (c) Where not less than one third directors think it should be passed in Meeting [175(1)]
- (d) Making contribution for a political party or for a political purpose [182(1)];
- (e) Disclosure of interest by a director {Section 184(1)};
- (f) Loan, investment and guarantee by a company [Section 186(5)];
- (g) Related Party Transaction [188(1)];
- (h) Signature on register of Contracts and Arrangements [189(1)]
- (i) Appointment of a managing director; whole – time director or manager and appointment of KMP [Section 196(4) and 203(3)],
- (j) Casual vacancy of a whole time key managerial personnel [203(4)]

Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting

(Annexure A to SS-1)

General Business Items

- Noting Minutes of Meetings of Audit Committee and other Committees.
- Approving financial statements and the Board's Report.
- Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.
- Specifying list of laws applicable specifically to the company.
- Appointment of Secretarial Auditors and Internal Auditors.

Specific Items

- Borrowing money otherwise than by issue of debentures.
- Investing the funds of the company.
- Granting loans or giving guarantee or providing security in respect of loans.
- Making political contributions.
- Making calls on shareholders in respect of money unpaid on their shares.
- Approving Remuneration of Managing Director, Whole-time Director and Manager .
- Appointment or Removal of Key Managerial Personnel.

- Appointment of a person as a Managing Director / Manager in more than one company.
- According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.
- Purchase and Sale of subsidiaries/assets which are not in the normal course of business.
- Approve Payment to Director for loss of office.
- Items arising out of separate meeting of the Independent Directors if so decided by the Independent Directors.

Corporate Actions

- Authorise Buy Back of securities
- Issue of securities, including debentures, whether in or outside India.
- Approving amalgamation, merger or reconstruction.
- Diversify the business.
- Takeover another company or acquiring controlling or substantial stake in another company.

Additional list of items in case of listed companies

- Approving Annual operating plans and budgets.
- Capital budgets and any updates.
- Information on remuneration of KMP.
- Show cause, demand, prosecution notices and penalty notices which are materially important.
- Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
- Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company
- Details of any joint venture or collaboration agreement.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non-payment of dividend, delay in share transfer etc.

Additionally, in respect of listed companies, the Board of directors shall periodically review compliance reports pertaining to all laws applicable to listed entity, prepared by the listed entity as well as steps taken by it to rectify instances of non-compliances. There are certain items which should also be approved at Meetings of the Board or, where permissible, by Committees thereof. An illustrative list of such items is given below: (Regulation 30, Schedule

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- (a) dividends and/or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched;
- (b) any cancellation of dividend with reasons thereof;
- (c) the decision on buyback of securities;
- (d) the decision with respect to fund raising proposed to be undertaken
- (e) increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched;
- (f) reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to;
- (g) short particulars of any other alterations of capital, including calls;
- (h) financial results;
- (i) decision on voluntary delisting by the listed entity from stock exchange(s).

The authority to delegate any power to a Committee or any other person must not be in contravention of any of the provisions of the Act and of the Articles or the Memorandum of Association of the company or the requirements of any regulatory bodies. The scope of the authority given may be limited by the Board and conditions may also be attached thereto.

As indicated earlier, if authorised by the Articles, the Directors may delegate all or any of their powers to Committees subject to such restrictions and limits as may be imposed. For this purpose, a company may incorporate a Regulation in its Articles on the lines of Regulation 71 of Table – F of Schedule – I appended to the Act which reads as follows:

- “(1) The board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such number or numbers of its body as it thinks fit.
- (2) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the board”.

The Directors have the power to delegate their authority to a Committee, consisting of at least two members. When the Board constitutes a Committee, the Resolution constituting the Committee should stipulate:

- (a) the terms of reference or purpose for constituting the Committee;
- (b) the Chairman of the Committee;
- (c) the quorum and other requirements for conducting meetings of the Committee; and
- (d) its power and authority.

The appointment and functioning of the Audit Committee shall be as per Section 177 of the Act. The appointment and functioning of ‘nomination and remuneration committee’ and ‘stakeholders relationship committee’ shall be as per Section 178 of the Act.

MEETINGS

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. However, every gathering or assembly does not constitute a meeting. A company meeting must be convened and held in perfect compliance with the various provisions of the Act and the rules framed thereunder. It is essential that the business dealt with at the meetings, should be validly transacted and not liable to be questioned later due to any irregularity. It is the duty of the Company Secretary to study carefully the

provisions of the Companies Act, 2013 (the Act) relating to meetings and to ensure that the business at meetings is conducted in conformity with the provisions of the Act.

The meetings of a company under the Companies Act, 2013 can be classified as under:

1. Meetings of the Directors and their Committees
2. Meetings of Shareholders:
 - (a) Annual General Meetings (AGM)
 - (b) Extraordinary General Meetings (EGM)
 - (c) Class Meetings.
3. Meetings of Debenture/bond holders
4. Meetings of the creditors otherwise than in winding up
5. Meeting of creditors and contributories in winding up.
6. Court convened meetings.

Board Meetings

Generally, directors act through meetings. Meetings of the directors provide a means to discuss the business and take formal decisions. The directors can only act at a meeting of the Board of directors through resolutions passed at such a meeting. As a general rule, the Board of Directors should exercise its powers at duly convened Board meeting. However, the Board may take decisions by resolutions passed by circulation, instead of assembling at a Board meeting. Regulation 67(1) of Table – F provides that the Board of directors may meet for the dispatch of business, adjourn and otherwise regulate its meetings, as it thinks fit. This provision clearly indicates that as a general rule, the directors must exercise their powers collectively as Board.

Meetings of directors provide a means to discuss the business and take formal decisions. The law therefore, specifically enjoins that the Board must formally meet once a quarter. It also provides for the matters which the Board should formally decide at its meetings by resolutions. That apart, the meetings provide a forum for deliberating on matters affecting the business and affairs of the company.

NOTICE OF BOARD MEETINGS

A meeting of the Board shall be called by giving not less than seven 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. [Section 173]

A meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. In case of absence of independent directors from such a meeting of the Board, 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 the notice of Board meeting, the following matters are required to be Specific Notice:

- (1) Appointment of Managing Director who is already a Managing Director or Manager of another company [Section 203(3)].
- (2) Appointment of Manager who is already a Manager or Managing Director of another company [Section 203(3)].

PROCEDURE FOR HOLDING MEETING OF THE BOARD OF DIRECTORS

Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board. [Section 173(1)]

However, a Specified IFSC public and private company shall hold the first meeting of the Board of Directors within sixty days of its incorporation and thereafter hold atleast one meeting of the Board of Directors in each half of a calendar year.

In case of section 8 companies, section 173(1) shall apply only to extent that the Board of such companies shall hold atleast one meeting within every six calender months.

As per Regulation 17, the board of every listed entity shall meet atleast four times a year with maximum time gap of one hundred and twenty days between any two meetings.

The procedural steps for Board meetings are as follows:

1. Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation.
2. Every company shall hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.
3. The Secretary or any other person so authorised shall call give not less than seven 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. [Section 173(3)].
4. Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.
5. According to Regulation 67 of Table – F of Schedule – I of the Act, a director may, or the manager or secretary on the requisition of a director shall, any time summon a meeting of the Board.
6. In case of first board meeting, the notice must also mention that it is the first Board meeting.
7. It is not obligatory to give agenda in the notice, but it is a good secretarial practice to enclose the agenda to the notice of the meeting.
8. In case of First Board meeting, keep ready –
 - (i) Original certificate of Incorporation.
 - (ii) Copy of Memorandum and Articles of Association.
 - (iii) Copies of Form Nos. INC-1 (Application for reservation of name), INC-7 (Application for Incorporation), INC-11 (Application of Incorporation), INC-22 (Notice of situation of Registered Office) and power of attorney.
 - (iv) Consent of directors (DIR-2);
 - (v) Design etc. of share certificate, sign board, name plate, letterhead etc.
 - (vi) Statement of preliminary expenses incurred.
 - (vii) Certificate in writing about eligibility to appointment from the proposed Auditors [Second and third proviso to Section 139(1)].
 - (viii) Certificate in writing about eligibility to appointment from the proposed Secretarial Auditor.

- (ix) Account opening form of the Bank with which Bank account of the company is to be opened.
 - (x) Cheques/drafts from members towards payment for the shares agreed to be taken by them.
 - (xi) Application(s) of qualified secretary to be appointed as secretary.
 - (xii) Original/copies of agreement entered into between the promoters before the incorporation of the company, for adoption and approval.
 - (xiii) Attendance Register for signature by directors.
 - (xiv) Arrange pads, pencils, a latest copy of the Companies Act, 2013, statutory registers and books etc.
 - (xv) Arrange for sitting, proper lighting, refreshment/lunch etc.
 - (xvi) Arrange projector etc. for presentation of the project for which the company is formed.
9. Contact and request all the directors to attend the meeting and arrange the facilities required by them in this regard, like conveyance, stay arrangements, location of venue etc.
 10. At least half an hour before the meeting, the persons responsible for the conducting the meeting should place the folders containing Agenda, notes to Agenda, draft minutes to Agenda, statement of expenses incurred/to be incurred, Business Plan etc. for ready reference of all directors to enable them to deliberate and discuss on each item of the agenda in detail.
 11. Before holding the meeting, welcome the directors and obtain their signatures on the Attendance Register.
 12. If quorum, as required under Section 174, is present, declare the meeting in order and inform the names of the directors who sought leave of absence from attending the meeting. The Quorum of a company shall be one third of the total strength of the Board or two directors whichever is higher. The participation of directors by video conferencing or by other means shall also be complied for the purpose of quorum.

In case of section 8 companies, the quorum of co. shall be either eight members or 25% of its total strength whichever is less. Provided that the quorum shall not be less than two members.
 13. The directors who are present at the meeting may elect one of them as the Chairman of the meeting and request him to take the Chair.
 14. Help the Chairman to conduct the meeting as per the agenda.
 15. If any director wants to place any other item for the discussion at the meeting, then such item may be taken up with the permission of the Chairman.
 16. Every director shall disclose his concern or interest in any company or companies or bodies corporate, firms or other association of individuals, by giving notice in writing in Form MBP-1
 17. Decide the date, time and place of the next Board meeting.
 18. After the meeting is over, prepare draft minutes of the meeting; get it reviewed by the chairman of the meeting and/or the Managing Director of the company.
 19. Send copy of draft minutes of the meeting to each of the directors of the company for information and comments.
 20. Contact and collect draft minutes from each of the directors with their comments. After that, in consultation with the Chairman/Managing Director finalise the minutes and enter them into the Minutes Book. All pages should be consecutively numbered.
 21. Such final minutes may be signed and dated by the Chairman of the meeting or by the Chairman of the succeeding meeting. All pages of the minutes are to be initialled and the last page of the minutes is to be signed and dated by the Chairman.
 22. Ensure that the minutes are entered within 30 days of the conclusion of meeting.

MEETINGS OF COMMITTEE OF DIRECTORS

If authorised by articles, the directors have power to delegate their authority to a committee and a company may adopt Regulation 71 of Table F to Schedule I which reads as under:

Regulation 71 states: “(1) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit;

(2) Any committee so formed shall in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.”

For transacting business of the company, the committee meetings can be conducted in accordance with Regulations 72 to 75 of Table F to Schedule I of the Act or other corresponding provisions of the company’s articles. These regulations read as under:

Regulation 72 provides: “(1) A committee may elect a chairman of its meetings,

(2) if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their member to be chairman of the meeting.”

Regulation 73 provides: “(1) A committee may meet and adjourn as it thinks proper (2) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present and in case of an equality of votes, the chairman shall have a second or casting vote.”

Regulation 74 provides: “All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.”

Regulation 75 provides: “Save as otherwise expressly provided in the Act, a resolution in writing by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or Committee, shall be as valid and effectual as if it had been passed at a meeting of the Board or Committee, duly convened and held.”

Audit Committee

Relevant provisions relating to meetings of Audit Committee as given under Section 177 read with Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014 are as follows:

1. Following companies shall constitute an audit committee:
 - (1) Every listed company;
 - (2) Every public company having paid up capital of ten crore rupees or more;
 - (3) Every public company having turnover of one hundred crore rupees or more;
 - (4) Every public company which have in aggregate outstanding loan or borrowings or debentures or deposits exceeding fifty crore rupees.
2. The audit committee shall have minimum three directors with independent directors forming a majority.
3. Every audit committee shall act in accordance with the terms of reference to be specified in writing by the Board.
4. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

5. The Audit Committee shall have authority to investigate into any matters in relations to items referred to it by the Board and for this purpose, shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.
6. The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

However, section 177 is not applicable on a Specified IFSC public company, thus it is not required to form an Audit Committee.

Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 with regard to Audit Committee meetings requires every listed entity to constitute a qualified and independent audit committee in accordance with the terms of reference. The audit committee shall have:

- Minimum three directors as members;
- Two-thirds of the members as independent directors;
- All members of audit committee to be financially literate and at least one member shall have accounting or related financial management expertise.
- The Chairperson of the Audit Committee shall be an Independent Director and he shall be present at Annual General Meeting to answer shareholder queries.
- The Company Secretary shall act as the Secretary to the Audit Committee.

Manner of conducting audit committee meeting

- (a) The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.
- (b) The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least two independent directors.
- (c) 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.
- (d) 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. Further, occasionally the audit committee may meet without the presence of any executives of the listed entity.

Other Committees

- The Board of Directors of every listed company and other prescribed class of Companies (same prescription as per Audit Committee) shall constitute a nomination and remuneration committee constituting of not less than 3 non-executive director out of which not less than half shall be Independent Director.
- The Board of Directors of the company which consist more than 1000 shareholders/debenture holders/deposit holder/any other security holder at any time during financial year shall constitute stakeholders relationship committee with Chairman as non-executive Director.

PREPARATION OF NOTICES AND AGENDA PAPERS FOR MEETINGS OF BOARD/ COMMITTEES OF BOARD

The agenda is compiled by secretary, possibly in collaboration with the chairman or managing director. The chairman

is not obliged to adhere strictly to the exact order of business set out in the agenda, although it is customary for him to secure the assent of the meeting to any variation. The initial item in the agenda is usually grant of requests for leave of absence, if any and the approval of the minutes of the last Board meeting. The next business usually refers to matters arising out of the previous minutes and then would follow matters of routine nature. The notice of a directors' meeting need not necessarily disclose the purpose of the meeting, [*Compagnie de Mayville v. Whitley, (1896) 1 Ch 788(CA).*]

The agenda of the Board meeting is finalized based on the company law requirements and on the matters submitted by the management. A listed company shall also comply with the requirements of Regulation 17(7) of the Listing Regulations while preparing agenda. The minimum information to be made available to the board is given in Schedule II Part A which is as under:-

- A. Annual operating plans and budgets and any updates.
- B. Capital budgets and any updates.
- C. Quarterly results for the listed entity and its operating divisions or business segments.
- D. Minutes of meetings of audit committee and other committees of the board of directors.
- E. The information on recruitment and remuneration of senior officers just below the level of board of directors, including appointment or removal of Chief Financial Officer and the Company Secretary.
- F. Show cause, demand, prosecution notices and penalty notices, which are materially important.
- G. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- H. Any material default in financial obligations to and by the listed entity, or substantial non-payment for goods sold by the listed entity.
- I. Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the listed entity or taken an adverse view regarding another enterprise that may have negative implications on the listed entity.
- J. Details of any joint venture or collaboration agreement.
- K. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- L. Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- M. Sale of investments, subsidiaries, assets which are material in nature and not in normal course of business.
- N. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material
- O. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

Secretarial Standards

Section 118(10) of the Companies Act, 2013, provides that every company shall observe Secretarial Standards with respect to general and board meeting specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

The Ministry of Corporate Affairs on 10th April, 2015 accorded the approval of the Central Government to the Secretarial Standards (SS) namely SS-1; Meetings of the Board of Directors and SS-2 General Meetings under sub-Section (10) of Section 118 of the Companies Act, 2013.

Secretarial Standard on meetings of the Board of Directors: SS – 1**1. Convening a Meeting***1.1 Authority*

1.1.1 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.

1.1.2 The Chairman may, unless dissented to or objected by the majority of Directors present at a Meeting at which a Quorum is present, adjourn the Meeting for any reason, at any stage of the Meeting.

1.2 Time, Place, Mode and Serial Number of Meeting

1.2.1 Every Meeting shall have a serial number.

1.2.2 A Meeting may be convened at any time and place, on any day, excluding a National Holiday.

1.2.3 Any Director may participate through Electronic Mode in a Meeting, if the company provides such facility, unless the Act or any other law specifically does not allow such participation through Electronic Mode in respect of any item of business.

1.3 Notice

1.3.1 Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means.

1.3.2 Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorised by the Board for the purpose.

1.3.3 The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting.

1.3.4 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.

1.3.5 The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.

1.3.6 Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

1.3.7 The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

1.3.8 Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.

1.3.9 Each item of business to be taken up at the Meeting shall be serially numbered.

1.3.10 Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

1.3.11 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

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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.

2. Frequency of Meetings

2.1 Meetings of the Board

The Board shall meet at least once in every calendar quarter, with a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board, such that at least four Meetings are held in each Calendar Year.

2.2 Meetings of Committees

Committees shall meet as often as necessary subject to the minimum number and frequency stipulated by the Board or as prescribed by any law or authority.

2.3 Meeting of 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.

3. Quorum

3.1 Quorum shall be present throughout the Meeting. Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

3.2 A Director shall not be reckoned for Quorum in respect of an item in which he is interested and he shall not be present, whether physically or through Electronic Mode, during discussions and voting on such item.

3.3 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.

3.4 Meetings of the Board

3.4.1 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.

3.4.2 Where the number of Directors is reduced below the minimum fixed by the Articles, no business shall be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.

3.5 Meetings of Committees

The presence of all the members of any 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.

4. Attendance at Meetings

4.1 Attendance registers

4.1.1 Every company shall maintain separate attendance registers for the Meetings of the Board and Meetings of the Committee.

4.1.2 The attendance register shall contain the following particulars: serial number and date of the Meeting; in case of a Committee Meeting name of the Committee; place of the Meeting; time of the Meeting; names of the Directors and signature of each Director present; name and signature of the Company Secretary who is in attendance and also of persons attending the Meeting by invitation.

4.1.3 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.

4.1.4 The attendance register shall be maintained at the Registered Office of the company or such other place as may be approved by the Board.

4.1.5 The attendance register is open for inspection by the Directors.

4.1.6 Entries in the attendance register shall be authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman by appending his signature to each page.

4.1.7 The attendance register shall be preserved for a period of at least eight financial years and may be destroyed thereafter with the approval of the Board.

4.1.8 The attendance register shall be kept in the custody of the Company Secretary.

4.2 Leave of absence shall be granted to a Director only when a request for such leave has been received by the Company Secretary or by the Chairman.

5. Chairman

5.1 *Meetings of the Board*

5.1.1 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.

5.1.2 The Chairman of the Board shall conduct the Meetings of the Board. If no 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.

5.2 *Meetings of Committees*

A member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the Meetings of the Committee. If no Chairman has been so elected or if the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless otherwise provided in the Articles.

6. Passing of Resolution by Circulation

6.1. *Authority*

6.1.1 The Chairman of the Board or in his absence, the Managing Director or in his absence, the Wholetime 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.

6.1.2 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.

6.2. *Procedure*

6.2.1 A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, individually to all the Directors including Interested Directors on the same day.

6.2.2 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.

6.2.3 Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal, the nature of concern or interest, if any, of any Director in the proposal,

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which the Director had earlier disclosed and the draft of the Resolution proposed. The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.

6.3. *Approval*

6.3.1 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.

6.3.2 The Resolution, if passed, shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.

6.4. *Recording*

Resolutions passed by circulation shall be noted at the next Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

6.5. *Validity*

Passing of Resolution by circulation shall be considered valid as if it had been passed at a duly convened Meeting of the Board.

7. **Minutes**

7.1. *Maintenance of Minutes*

7.1.1 Minutes shall be recorded in books maintained for that purpose.

7.1.2 A distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees.

7.1.3 Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

7.1.4 The pages of the Minutes Books shall be consecutively numbered.

7.1.5 Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.

7.1.6 Minutes of the Board Meetings, 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.

7.1.7 Minutes of the Board Meeting shall be kept at the Registered Office of the company or at such other place as may be approved by the Board.

7.2. *Contents of Minutes*

7.2.1 General Contents

7.2.1.1 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.

7.2.1.2 Minutes shall record the names of the Directors present physically or through Electronic Mode, the Company Secretary who is in attendance at the Meeting and Invitees, if any, including Invitees for specific items.

7.2.1.3 Minutes shall contain a record of all appointments made at the Meeting.

7.2.2 Specific Contents

7.2.2.1 Minutes shall *inter-alia* contain:

- (a) Record of election, if any, of the Chairman of the Meeting.

- (b) Record of presence of Quorum.
- (c) The names of Directors who sought and were granted leave of absence.
- (d) The mode of attendance of every Director whether physically or through Electronic Mode.
- (e) In case of a Director participating through Electronic Mode, his particulars, the location from where and the Agenda items in which he participated.
- (f) 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.
- (g) Noting of the Minutes of the preceding Meeting.
- (h) Noting the Minutes of the Meetings of the Committees.
- (i) The text of the Resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any.
- (j) The fact that an Interested Director was not present during the discussion and did not vote.
- (k) The views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company.
- (l) If any Director has participated only for a part of the Meeting, the Agenda items in which he did not participate.
- (m) The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.
- (n) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice and the transacting of any item other than those included in the Agenda.
- (o) The time of commencement and conclusion of the Meeting.

7.2.2.2. Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.

7.3. *Recording of Minutes*

7.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.

7.3.2 Minutes shall be written in clear, concise and plain language.

7.3.3 Any document, report or notes placed before the Board and referred to in the Minutes shall be identified by initialling of such document, report or notes by the Company Secretary or the Chairman.

7.3.4 Where any earlier Resolution (s) or decision is superseded or modified, Minutes shall contain a reference to such earlier Resolution (s) or decision.

7.3.5 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.

7.4. *Finalisation of Minutes*

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.

7.5. *Entry in the Minutes Book*

7.5.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.

7.5.2 The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.

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7.5.3 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 in which such Minutes are sought to be altered.

7.6. *Signing and Dating of Minutes*

7.6.1 Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting.

7.6.2 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.

7.6.3 Minutes, once signed by the Chairman, shall not be altered, save as mentioned in this Standard.

7.6.4 A copy of the 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 Directors within fifteen days after these are signed.

7.7. *Inspection and Extracts of Minutes*

7.7.1 The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.

7.7.2 Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.

8. **Preservation of Minutes and other Records**

8.1 Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.

8.2 Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.

8.3 Minutes Books shall be kept in the custody of the Company Secretary.

9. **Disclosure**

The Annual Report and Annual Return of a company shall disclose the number and dates of Meetings of the Board and Committees held during the financial year indicating the number of Meetings attended by each Director.

Effective Date

This Standard came into effect since 1st July, 2015.

PROCEDURE FOR PASSING A BOARD RESOLUTION BY CIRCULATION

Decisions relating to the policy and operations of a Company are arrived at meetings of the Board, held periodically. However, it may not always be practicable to convene a meeting of the Board to discuss matters on which decisions are needed urgently. In such circumstances, passing of resolution by circulation can be resorted to. Rule 5 of the Companies (meeting of Board and its Power) Rules 2014, a resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.

In case not less than one third or more of total number of directors of the company for time being require that any resolution under circulation must be decided at a meeting, the chair person shall put the same to be decided at meeting of Board.

The procedure to pass a board resolution by circulation is as under (Section 175):-

1. Circulate the draft of the resolution with all necessary papers, if any, to all the directors (in the case of a

committee of Board to all the members of the committee) at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means for approval by signing one copy of the resolution and sending it back to the company.

2. If all or majority of the above directors as are entitled to vote on the resolution approve the resolution, the resolution shall be deemed to have been duly passed by the Board.
3. Record the resolution having been passed by circulation in the minutes of the immediate next Board Meeting.
4. Please enclose a copy of the circular resolution to the agenda of the ensuing immediately next Board meeting mentioning in the notes that the said resolution was approved by so many number of directors and a certain number of directors dissented from it, if any and also that it was passed by majority of directors.

PARTICIPATION OF DIRECTORS IN MEETINGS OF BOARD/COMMITTEE OF DIRECTORS THROUGH ELECTRONIC MODE

Section 173(2) provides the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, 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.

“Video conferencing or other audio visual means” means audio- visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

As per Rule 3 of the Companies (Meetings of Board and its Power) Rules 2014, a company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

1. Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
2. The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care-
 - (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
 - (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
 - (c) to record proceedings and prepare the minutes of the meeting;
 - (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year;
 - (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
 - (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.
 - (g) The persons, who are differently abled, may make request to the Board to allow a person to accompany him.
3. The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
4. The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

5. A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.
6. If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.
7. The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.
8. In the absence of any such intimation, it shall be assumed that the director shall attend the meeting in person.
9. At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record,
 - (a) name;
 - (b) the location from where he is participating;
 - (c) that he has received the agenda and all the relevant material for the meeting; and
 - (d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);
10. After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.
11. A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.
12. The Chairperson shall ensure that the required quorum is present throughout the meeting.
13. With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.
14. The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.
15. Every participant shall identify himself for the record before speaking on any item of business on the agenda.
16. If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.
17. If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.
18. From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.
19. At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary

of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.

20. The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.
21. The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.
22. Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
23. After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Matters not to be dealt with in meeting through video conferencing:

- (a) the approval of the annual financial statements;
- (b) approval of the Board's report;
- (c) the approval of the prospectus;
- (d) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by Board under section 134(1) accounts; and
- (e) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Requirements as per SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015

Listing regulations has divided the intimation to the Stock Exchange into two parts, namely, Prior intimations and Disclosure of events or information.

Regulation 29 deals with Prior Intimations.

It provides that the listed entity shall give prior intimation at least two working days in advance, excluding the date of the intimation and date of the meeting 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 buyback 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 for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers:

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Provided that in case the declaration of bonus by the listed entity is not on the agenda of the meeting of board of directors, prior intimation is not required to be given to the stock exchange(s).

The intimation regarding item specified in clause (a) above, 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.

Further, sub-regulation (3) provides that 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 –

- (a) 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.
- (b) 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.

Regulation 30 provides for disclosure of events or information.

Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

The Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

Apart from such listed items, the listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality.

Regulation 4 provides the criteria for determination of materiality of events/ information:

- (a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or
- (b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;
- (c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

(ii) The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website.

Further, the listed entity shall disclose on its website all such events or information which has been disclosed to stock exchange(s) under this regulation , and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.

PROCEDURE FOR HOLDING AN ANNUAL GENERAL MEETING

According to Section 96(1) of the Companies Act, 2013, a meeting known as an annual general meeting is required to be held by every company other than 'one person company' every year. The company shall specify the meeting as such in the notices calling Annual General Meeting.

In case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company. If a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.

This means, for a company incorporated on 1st day of January 2015, the first financial year shall be closed on 31st

day of March 2016 and Annual General Meeting should be convened on or before 31st day of December 2016. However for a company incorporated on 31st day of December 2014, the first financial year shall be closed on 31st day of March 2015 and Annual General Meeting should be convened on or before 31st day of December 2015.

In any case other than first annual general meeting, it shall be held within a period of six months, from the date of closing of the financial year. Not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

The Registrar may, for any special reason, extend the time within which any annual general meeting, shall be held, by a period not exceeding three months. However the Registrar may not extend the time for first annual general meeting.

Where, last annual general meeting was held on 31st day of December 2015, next annual general meeting shall be held on or before 30th day of September 2016. However where, last annual general meeting was held on 31st day of May 2015, next annual general meeting shall be held on or before 31st day of August 2016. The Registrar may extend these dates to 31st day of December 2016 and 30th day of November 2016 respectively.

Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and 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 situate.

Government company may convene its Annual General Meeting at such other place as the Central Government may approve in this behalf. In sub-section (2) of section 96, for the words "some other place within the city, town or village in which the registered office of the company is situate", the words "such other place as the Central Government may approve in this behalf" has been substituted. [MCA has vide notification dated June 05, 2015]

In case of section 8 companies, in sub-section (2), after the proviso and before the explanation, the following proviso has been inserted, namely:-

Provided further that the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.

Therefore, section 96(2) inter-alia covers time, date venue of annual general meeting. In case of Section 8 companies, the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.

MCA has given the following relaxation, to the private companies vide its notification dated June 5, 2015 and to Specified IFSC public company vide its Notification Dated 4th January, 2017, with respect to conduct of general meetings:

Section 101 to Section 107 and Section 109 shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise. That means Articles of Association of a Private Company can have specific provisions with respect to - notice of the general meeting (Section 101); Statement to be annexed to notice (Section 102); Quorum for meeting (Section 103); Chairman of meetings (Section 104); proxies (Section 105); restriction on voting rights (Section 106); Voting by show of hands (Section 107); Demand for poll (Section 109).

The Company Secretary is responsible for making all the arrangements for holding the annual general meetings of the company. He is required to perform the following functions and duties in this connection.

(A) Before the Meeting:

1. To convene a Board meeting, after giving notice as per Section 173(3), as soon as the final accounts are ready, invite the Auditors for their report and transact the following business (in case of listed company, give advance notice to stock exchange):
 - (a) To consider and discuss the report of Audit Committee on the Annual accounts.
 - (b) To approve the accounts and authorise signing of accounts.
 - (c) To secure Auditor's report on the accounts.

(d) To approve the draft of the Board's Report in compliance with the provisions of Section 134 of the Act and to authorise the Chairman to sign the Report on behalf of the Board.

(e) To consider the payment of dividend, if any, in case it is to be declared in the Annual General Meeting

(Notes: 1. In case of listed company prior intimation have to be sent to stock exchange of the Board meeting where recommendation of dividend is proposed to be considered vide Regulation 29 of Listing Regulation.

2. Listed entity to disclose the audit qualifications of any other audit reservations along with financial results in addition to explanatory statement as to how audit qualifications of previous accounting year have been addressed in financial results).

(f) To fix time, date and place for the annual general meeting, approve the draft notice and also authorise the Secretary to issue Notice for the meeting. The Notice must contain Ordinary Business in accordance with the provisions of Section 102 of the Act,

While fixing the time, date and place for the annual general meeting, care should be taken that the time should be during 9 am to 6 pm, the date should not be a National holiday, and the place should be either the registered office of the company or some other place within the same city, town or village in which the registered office of the company is situated.

(g) To consider the closure of the Register of Members and the Share Transfer Books of the Company in compliance with the provisions of Section 91 of the Act and to authorise the Secretary to arrange for its publication in a newspaper. In case of listed company, a notice in advance of at least 7 working days should be sent to the stock exchange(s) about the proposed dates for such closure and also to comply with the requirement of stock exchange for book closure.

2. Listed entity shall give prior intimation to stock exchange atleast 5 days in advance (excluding date of intimation and date of meeting) about Board meeting in which financial results are due to be considered [Regulation 29 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].

3. To arrange for the publication in a newspaper of at least 7 days previous notice of closure of the Register of Members and the Share Transfer Books as per Section 91 of the Act. [Regulation 42 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]

4. In case of listed company, close the registers for the period as advertised and inform the all the stock exchanges by giving a notice in advance of at least 7 working days.

5. To arrange for the printing of the balance sheet, profit and loss account, reports of the directors and of the auditors and the notice for the meeting.

6. To issue notice to the shareholders, for at least 21 clear days before the date of annual general meeting and where it is to be sent by post, it should be posted 48 hours still earlier in terms of section 101. Notice of the meeting must also be send to the directors (whether member or not), auditors and stock exchanges.

In case of section 8 companies 14 clear days notice is sufficient for general meeting.

7. If the directors decide for the publication of the Chairman's statement, make arrangements for the same.

8. Check proxies with the Register of Members as and when they are received, from day to day, so that an up-to-date position is available till the date of the meeting.

9. To arrange for the printing of attendance slips or attendance register and ballot papers.

10. In consultation with the chairman or the Managing Director, prepare a detailed agenda for the meeting.

11. To prepare Dividend List from the Register of Members/beneficial owners, as on the last date of the closure of the Register of Members and the Share Transfer Books.

12. To make arrangement for the printing of a combined document containing “Notice of Dividend” and “Dividend Warrant”.

(B) At the Meeting:

- (1) To arrange for the collection of admission slips or in the alternative to get the Attendance Register signed by the shareholders, and to make them comfortable in their seats, and to look to the comfort and convenience of the directors and the chairman.
- (2) To help the Chairman in ascertaining quorum.
- (3) To read out the notice of the meeting if advised by the Chairman.
- (4) To read out the Auditor’s Report, if advised by the Chairman, when the item relating to adoption of accounts is taken up for consideration.
- (5) To produce copies of Memorandum and Articles of Association of the company.
- (6) To help the Chairman in the conduct of the meeting, particularly in the conduct of poll, counting of votes etc.
- (7) To supply to the Chairman any information which he may require in connection with the queries raised by the shareholders relating to accounts and other connected matters.
- (8) Give advance information to the members who are to propose and second the resolutions to be passed at the meeting.
- (9) To take notes of the proceedings for the purpose of preparing minutes thereof.
- (10) To keep at the meeting Register of Members, Minutes Book of the general meeting containing minutes of the previous annual general meeting(s), copies of the accounts, notice of the meeting and reports of the directors and of the auditors.
- (11) To ensure that the Chairman of the Audit Committee is present at annual general meeting to provide any clarification on matters relating to audit and to answer shareholder queries;

(C) After the Meeting:

- (1) To prepare minutes of the proceedings.
- (2) To record the minutes of the meeting and get them signed by the Chairman within thirty days of the meeting.
- (3) To send intimation of appointment/re-appointment of directors. File Form DIR-12 with the Registrar of Companies within 30 days of appointment along with filing fee.
- (4) To send intimation of appointment/re-appointment of auditors.
- (5) To file copies of the special and other resolutions, if any, passed at the meeting, along with Form MGT-14 with the Registrar of Companies, within thirty days of the meeting.
- (6) To file balance sheet, profit and loss account, reports of the directors and the auditors and the notice of the meeting in Form AOC-4 within thirty days of the meeting. In case of companies covered under XBRL filing, it should be ensured that the annual accounts are filed in XBRL format. Ensure that a copy of Secretarial Audit Report obtained from a Secretary in whole time practice as required under Section 204(1) of the Act, if any, is filed with Registrar of Companies within 30 days from the date of annual general meeting.

Listed entity shall submit the annual report to stock exchange within 21 working days of it being approved and adopted in AGM [Regulation 34 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]

- (7) Deposit dividend distribution tax at the applicable rate within the prescribed time limit under Income-tax Act, 1961.
- (8) Where the company has invited public deposits, a copy of the Balance sheet shall be forwarded to the RBI.
- (9) To open a separate bank account known as "Dividend Account for the year....." and to deposit the total amount of dividend within five days from the date of declaration of dividend.
- (10) To get the Dividend Warrants and Notice of Dividend signed by authorised persons.
- (11) To despatch Dividend Warrants together with the Notice of Dividend to the shareholders within thirty days of the declaration of dividend after making arrangement with the banker for payment of dividend warrants at prescribed number of branches at par.
- (12) To file along with the prescribed filing fee, Annual Return in Schedule V to the Companies Act as an attachment to Form MGT-7 with the Registrar of Companies within sixty days of the meeting prepared as at the date of the annual general meeting, as required by Section 92 of the Companies Act, 2013. The Certificate of Company Secretary shall be in Form MGT-8 and extract of annual return shall be attached with Board Report in Form MGT-9.

However, a Specified IFSC public and private company shall not attach extract of annual return with the Board Report.

Ensure that in the case of listed company, the annual return is also signed by a Company Secretary in whole time practice.

- (13) To take action on other decisions of the shareholders.
- (14) If the company is listed then to submit to the stock exchange, within 48 hours of conclusion of annual general meeting, details regarding the voting results in the following format specified by Board (Regulation 44 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015] :

CONDUCT OF POLL

At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.[Section 107(1)]

Poll is a method of voting in which votes are cast by a Member, in person or by Proxy, in proportion to the number of shares held by him. Section 47(1) provides that the voting rights of a Member (holding equity shares) on a poll shall be in proportion to his share of the paid-up equity capital of the company. This is governed by the principle 'one share-one vote', subject, however, to Section 43 which provides for equity shares having differential rights as to voting.

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.

Where a preference shareholder has a right to vote on any resolution, his voting right on a poll shall be in the same proportion as the capital paid-up in respect of the preference share bears to the total paid-up equity capital of the company. [Section 47(2)].

Memorandum or Articles of Association of a private limited company can provide for a clause, making section 43 and section 47 not applicable to that company.

Similarly, Memorandum or Articles of Association of a Specified IFSC public company can provide for a clause, making section 43 and section 47 not applicable to that company.

Section 109(4) stipulates the time for taking a poll at a General Meeting. When a poll is demanded on the question of adjournment of the Meeting or if it pertains to the Resolution for election of a Chairman of the Meeting under

Section 109(3), it must be taken “forthwith”, i.e. immediately after it is demanded. When a poll is demanded on any other resolution, the Chairman should decide the time for taking a poll and such poll should be taken within forty-eight hours from the time when the demand was made.

Where the Articles provided for a poll to be taken “immediately”, it was held that the word ‘immediately’ meant as soon as practicable. [*Jackson v. Hamlyn* (1953) 1 All ER 887; (1953) 2 WLR 709]. In this case, the Articles of the company provided that a poll on any question of adjournment should be taken immediately at the Meeting and without adjournment and that proxies should be lodged at least forty-eight hours before the time appointed for holding a Meeting or adjourned Meeting. At an Extraordinary General Meeting of the company, held on January 20, 1953, to consider certain resolutions proposed by some of the shareholders, a poll was demanded on a motion for adjournment. The Meeting, which had started at noon and had already lasted for over three hours, could not be continued in the room where it was being held as that was then required for another purpose, and no other room was available. As the scrutineers would require over two hours to count the votes on the poll, the Chairman stated that the poll would be taken immediately and the result announced later. He went on to say that, if the poll was in favour of adjournment, the Meeting would stand adjourned for thirty days and, if against, another Meeting would be called as soon as practicable. The poll was then taken and the result was made public on January 22, 1953, the motion for adjournment being lost by a substantial majority. It was held that the requirement in the company’s Articles that a poll on any question of adjournment should be taken immediately meant that the poll was to be taken as soon as practicable in all the circumstances. As it was impossible, for physical reasons, to carry on with the Meeting on January 20, any Meeting convened to hear the result of the poll and to continue with the business of the Meeting of January 20 (the motion for adjournment having been lost) would be a continuation of the Meeting of January 20 and, therefore, any proxies deposited after mid-day on January 18 would not be valid.

In terms of Section 109, the chairperson has power to order a poll before or on declaration of result of a voting on his own motion. In case of companies having share capital, the members present or their proxies with one – tenth of voting power or members holding not less than five lakh rupees may demand a poll before or on declaration of result. In case of companies not having a share capital, the members present in person or by proxy having not less than one – tenth of the total voting power may demand poll before or on declaration of result.

Once a valid demand for a poll has been received, Sub-section (2) of Section 109 provides that those who have presented the demand may withdraw it at any time. However, the demand for poll cannot be withdrawn once the Chairman declares that a poll will be taken and then adjourns the Meeting for that purpose, fixing the time and hour of poll. [*Rv. Mayor of Dover* (1903) 1 KB 668].

The Chairman has the right to order a poll to be taken on any resolution either of his own motion or when it is validly demanded by one or more Member/s. The Chairman can order a poll before a resolution is put to the vote on a show of hands or on the declaration of the result of voting by a show of hands.

Regulation 54 of Table – F of Schedule – I provides that any business other than that upon which a poll is demanded can be proceeded with, pending the conducting of the poll.

Where the Chairman refused to order a poll even after a valid demand had been made, the Company Law Board held that the business on the agenda for which the poll was demanded and which was carried through by show of hands becomes invalid. [*Namita Gupta v. Cachar Native Joint Stock Co. Ltd.*, (1999) 98, Com Cases 655].

A poll when validly demanded should be taken, even if the Chairman had refused to grant the poll. [*M.K. Srinivasan and Others v. W.S. Subrahmanya Ayyar and Others* (1932) 2 Com Cases 147]. Consequently, if a valid demand for poll is refused by the Chairman, the Meeting should either be re-convened or a new Meeting should be convened to hold the poll or to consider the item in respect of which the valid demand for poll was not granted, as the case may be.

E-Voting

Every company other than a company referred to in chapter XB or chapter XC of the Securities And Exchange Board of India (Issue of capital and Disclosures Requirements) Regulations, 2009 having its equity shares listed on

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a recognised stock exchange or a company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at general meetings by electronic means.

As per Rule 20 of the Companies (Management and Administration) Rules, 2014, a company which provides the facility to its members to exercise voting by electronic means shall comply with the following procedure, namely:-

- (i) the notice of the meeting shall be sent to all the members, directors and auditors of the company either –
 - (a) by registered post or speed post ; or
 - (b) through electronic means, namely, registered e-mail ID of the recipient; or
 - (c) by courier service;
- (ii) the notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;
- (iii) the notice of the meeting shall clearly state –
 - (A) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
 - (B) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
 - (C) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;
- (iv) the notice shall –
 - (A) indicate the process and manner for voting by electronic means ;
 - (B) indicate the time schedule including the time period during which the votes may be cast by remote e-voting ;
 - (C) provide the details about the login ID;
 - (D) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.
- (v) the company shall cause a public notice by way of an advertisement to be published, immediately on completion of despatch 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 in the said advertisement, *inter alia*, the following matters namely :-
 - (a) statement that the business may be transacted through voting by electronic means;
 - (b) the date and time of commencement of remote e-voting;
 - (c) the date and time of end of remote e-voting;
 - (d) cut-off date;
 - (e) the manner in which persons who have acquired shares and become members of the company after the despatch of notice may obtain the login ID and password;
 - (f) the statement that –

- (A) remote e-voting shall not be allowed beyond the said date and time;
- (B) the manner in which the company shall provide for voting by members present at the meeting; and
- (C) a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and
- (D) a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;

- (g) website address of the company, if any, and of the agency where notice of the meeting is displayed; and
- (h) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

- (vi) the facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;
- (vii) during the period when facility for remote e-voting is provided, the members of the company' holding shares either in physical form or in dematerialised form, as on the cut-off date, may opt for remote e-voting:

Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again

Provided further that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

- (viii) at the end of the remote e-voting period, the facility shall forthwith be blocked:

Provided that if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

- (ix) the Board of Directors shall appoint one or more scrutiner, who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinise the voting and remote e-voting process in a fair and transparent manner:

Provided that the scrutiner so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system;

- (x) the scrutiner shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;
- (xi) the Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, as provided in clauses (a) to (h) of sub-rule (1) of rule 21, as applicable, with the assistance of scrutiner, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.
- (xii) the scrutiner shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company and make, not later than three days of conclusion of the meeting, a consolidated scrutiner's report of the total votes cast in favour or against, if any, to the Chairman or a person authorised by him in writing who shall countersign the same:

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Provided that the Chairman or a person authorised by him in writing shall declare the result of the voting forthwith;

Explanation. – It is here by clarified that the manner in which members have cast their votes, that is, affirming or negating the resolution, shall remain secret and not available to the Chairman, Scrutiniser or any other person till the votes are cast in the meeting.

- (xiii) For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutiniser shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutiniser may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes:
- (xiv) the scrutiniser shall maintain a register either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights;
- (xv) the register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutiniser until the Chairman considers, approves and signs the minutes and thereafter, the scrutiniser shall hand over the register and other related papers to the company.
- (xvi) the results declared along with the report of the scrutiniser shall be placed on the website of the company, if any, and on the website of the agency immediately after the result is declared by the Chairman :

Provided that in case of companies whose equity shares are listed on a recognised stock exchange, the company shall, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed and such stock exchange or exchanges shall place the results on its or their website.

- (xvii) subject to receipt of requisite number of votes, the resolution shall be deemed to be passed on the date of the relevant general meeting.

Explanation. - For the purposes of this clause, the requisite number of votes shall be the votes required to pass the resolution as the 'ordinary resolution' or the 'special resolution', as the case may be, under section 114 of the Act.

- (xviii) a resolution proposed to be considered through voting by electronic means shall not be withdrawn.

The result of the poll shall be deemed to be decision of the meeting, the chairman is bound by the result of the poll. [Section 109(7)]. The result of poll once declared shall be final. The decision as declared by the Chairman should be recorded in the Minutes of the Meeting.

Articles of Association of Private Company may have specific provision with respect of Demand for poll (Section 109)

In case of private company section 109 shall apply unless otherwise specify in respective sections or the articles of the company provide otherwise (MCA vide Notification dated 5th June, 2015).

The poll is complete on the day when the result is ascertained and declared, and not when the voting is completed. [*Holmes v. Lord Keyes* (1958) Ch 199; All ER 129].

VOTING THROUGH ELECTRONIC MODE

Voting by electronic mode means a process for recording votes by the members using a computer based machine to display an electronic ballot and to record the vote and also the number of votes polled in favour or against such that the entire voting gets registered and counted in a electronic registry in a centralized server.

According to Section 108 of the Companies Act, 2013 any company may opt voting through electronic means. The central government may prescribe certain companies for compulsory electronic voting in general meetings.

As per regulation 44 of Listing regulations, the listed entity shall submit to the stock exchange within forty eight hours of conclusion of its general meeting details regarding the voting results in the format specified by the Board.

PROCEDURE FOR PASSING OF RESOLUTIONS BY POSTAL BALLOT

According to Section 110, a company shall transact businesses of notified items through postal ballot. A company may transact any business through postal ballot except –

- (i) ordinary business in an annual general meeting; and
- (ii) business in respect of which directors or auditors have a right to be heard at any meeting.

A resolution passed through postal ballot shall be deemed to have been passed at a general meeting.

Postal Ballot is not same as voting through electronic mode. The concept of Postal Ballot is a unique provision which gives shareholders the right to vote on items of business of a corporate body without actually attending its general meetings either personally or through their proxies/representatives. Postal Ballot provides an opportunity even to such shareholders to take part in the decision making process. The facility now provided to all shareholders, regardless of their location or their ability to be physically present at an appointed day and place, to approve or reject a proposal of the Board and to vote on items of business by postal or electronic mode, is a further step to encourage corporate democracy and to promote good corporate governance.

One person company and other companies having upto two hundred members are not required to transact any business through postal ballot. [Proviso to Rule 22(16)]

However, a company is required to hold an Annual General Meeting, every year, as this is a mandatory requirement under Section 96 of the Act.

Items of business to be transacted through postal ballot

Pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a postal ballot-

- (a) **Alteration of the objects clause** of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
- (b) **Alteration of articles of association** in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;
- (c) **Change in place of registered office** outside the local limits of any city, town or village as specified in sub-section (5) of section 12;
- (d) **Change in objects** for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;
- (e) **Issue of shares with differential rights** as to voting or dividend or otherwise under subclause (ii) of clause (a) of section 43;
- (f) **Variation in the rights attached** to a class of shares or debentures or other securities as specified under section 48;
- (g) **Buy-back of shares** by a company under sub-section (1) of section 68;
- (h) **Election of a director** under section 151 of the Act;

- (i) **Sale of the whole or substantially the whole of an undertaking** of a company as specified under sub-clause (a) of sub-section (1) of section 180;
- (j) **Giving loans or extending guarantee** or providing security in excess of the limit specified under sub-section (3) of section 186. [Rule 22(16)]

Procedure for Postal Ballot

1. Rule 22 of the Companies (Management and Administration) Rules 2014 lays down procedural details.
2. Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a **notice** to all the shareholders (*read members*), along with a draft resolution explaining the reasons there for. The Company shall request members them to send their assent or dissent in writing on a postal ballot within a period of thirty days from the date of dispatch of the notice. **Postal ballot means voting by post or through electronic means.** [Rule 22(1)]
3. The notice shall be sent either
 - (a) by Registered Post or speed post, or
 - (b) through electronic means like registered e-mail id or
 - (c) through courier service

for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days. [Rule 22(2)]
4. 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 therein, inter alia, the following matters, namely:-
 - (a) a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
 - (b) the date of completion of dispatch of notices;
 - (c) the date of commencement of voting;
 - (d) the date of end of voting;
 - (e) the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;
 - (f) a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and
 - (g) contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means. [Rule 22(3)]
5. The notice of the postal ballot shall also 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. [Rule 22(4)]
6. The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner. [Rule 22(5)]
7. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority. [Rule 22(6)]

8. Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder. [Rule 22(8)]
9. The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof. [Rule 22(9)]
10. The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid. [Rule 22(10)]
11. The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely. [Rule 22(11)]
12. The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received. [Rule 22(12)]
13. The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company. [Rule 22(13)]
14. The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis to this rule in respect of the voting by electronic means. [Rule 22(15)]

ADJOURNMENT OF A MEETING

1. Adjournment means to defer or suspend the Meeting to a future time, either at an appointed date or indefinitely or as decided by the members present at the scheduled Meeting. For a valid adjournment of a General Meeting, the holding of the Meeting at its scheduled time is necessary. A duly convened Meeting should not be adjourned arbitrarily by the Chairman. The Chairman may adjourn a Meeting with the consent of the members and shall adjourn a Meeting if so decided by the members. The Meeting may, however, be adjourned at any time. It may be adjourned after some items of business have been transacted and the remaining items can be transacted at the adjourned Meeting.
2. Regulation 49 of Table – F of Schedule - I of the Act provides that the Chairman may, with the consent of any Meeting at which a Quorum is present, and shall, if so directed by the Meeting, adjourn the Meeting from time to time and from place to place and may adjourn the Meeting for bona fide reasons. Once a Meeting is called, the Chairman cannot adjourn it arbitrarily. Its continuance or adjournment rests entirely on the will of the members. If a Chairman vacates the Chair or adjourns the Meeting regardless of the views of the majority, those remaining, even if a minority, can appoint a Chairman and conduct the business left unfinished by the former Chairman. [*Catesby v. Burnett*, (1916) 2 Ch 325 (Ch D)].
3. Where a Meeting is unlawfully adjourned by the Chairman thinking that he is not likely to succeed in his object, the remaining Members possess the right to continue the Meeting and conduct the business left un-transacted by the Chairman. [*Seth Sobhag Mal Lodha v. Edward Mills. Co. Ltd.*, (1972) 42 Com Cases 1 at 18 (Raj)]. In the case of *United Bank of India Ltd. v. United India Credit and Development Corporation Ltd.* (1977) 47 Com Cases 689, it was held that every Chairman has the right to make a bona fide adjournment whilst a poll or other business is proceeding, if circumstances of violent interruption make it unsafe or seriously difficult for the members to tender their votes. The question will turn upon the intention and effect of the adjournment; if the intention and effect were to interrupt or delay the business, such an adjournment would be illegal; if, on the

contrary, the intention and effect were to forward or facilitate it and no injurious effects would result, such an adjournment would generally be supported.

4. If a Meeting is adjourned *sine-die* or for a period of thirty days or more, a Notice of the adjourned Meeting should be given in accordance with the provisions contained hereinabove relating to Notice. Instead of sending a fresh Notice for the adjourned Meeting, the notice of the original Meeting may be sent, under cover of an intimation specifying the day, date, time and place of the adjourned Meeting. The intimation should clarify that certain items of business had been transacted at the original Meeting, state the reasons for adjournment and list the remaining items of business to be transacted at the adjourned Meeting. The relevant explanatory statement in respect of such remaining items of business should also be given.
5. If a Meeting is adjourned for a period of less than thirty days, in the case of listed companies with more than 5,000 Members, Notice thereof specifying the day, date, time and venue of the Meeting should be published immediately in a newspaper having a wide circulation within such States of India where more than 1,000 Members reside.

An adjourned Meeting is merely the continuation of the original Meeting and, unless the Articles provide otherwise, a fresh Notice of the adjourned Meeting is not necessary. However, it is desirable and a good corporate practice to make an announcement in newspapers regarding the adjournment of the Meeting, giving details of the day, date, time and place and the business to be transacted at the adjourned Meeting. Such announcement should also be placed on the website, if any, of the company.

6. If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting should be held on the same day, in the next week at the same time and place or on such other day and at such other time and place as may be determined by the Board. In the case of listed companies with more than 5,000 Members, Notice thereof, specifying the day, date, time and venue of the Meeting, should be published immediately in a newspaper having a wide circulation within such States of India where more than 1,000 Members reside.
7. If a Quorum is not present at a Meeting, the Meeting is not validly constituted for the transaction of business. If within half an hour from the time appointed for holding a General Meeting, a Quorum is not present, then in the case of a Meeting called by the Board, the Meeting must be adjourned to the same day in the next week at the same time and the same place.
8. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.
9. In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give 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.
10. If, within half an hour from the time appointed for holding a requisitioned Meeting, a Quorum is not present, the Meeting shall stand cancelled.
11. At an adjourned Meeting, only the unfinished business of the original Meeting should be considered. If any new business has to be transacted, a fresh Meeting must be duly convened.

REPORT ON ANNUAL GENERAL MEETING

Under Section 121 of the Companies Act, 2013, every listed public company shall, prepare in accordance with Rule 31 of the Companies (Management and Administration) Rules 2014, a report on each annual general meeting.

1. The report in pursuance of the provisions of sub-section (1) of section 121 shall be prepared in the following manner, namely:-
 - (a) the report under this section shall be prepared in addition to the minutes of the general meeting;
 - (b) the report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company;
 - (c) the report shall contain the details in respect of the following, namely:-
 - (i) the day, date, hour and venue of the annual general meeting;
 - (ii) confirmation with respect to appointment of Chairman of the meeting;
 - (iii) number of members attending the meeting;
 - (iv) confirmation of quorum;
 - (v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;
 - (vi) business transacted at the meeting and result thereof;
 - (vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and
 - (viii) any other points relevant for inclusion in the report.
 - (d) the Report shall contain fair and correct summary of the proceedings of the meeting.
2. The copy of the report prepared in pursuance of section 121 and rule 31, shall be filed with the Registrar in Form MGT – 15 within thirty days of the conclusion of the annual general meeting along with the fee.

PROCEDURE FOR HOLDING AN EXTRAORDINARY GENERAL MEETING

Any general meeting held between two annual general meetings will be called an extraordinary general meeting. Business, which arises between two annual general meetings and being urgent and cannot be deferred till the next annual general meeting, is transacted at an extraordinary general meeting.

According to Section 100, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

However, in case of a Specified IFSC public and private company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India.

The Board shall, at the requisition made by,—

- (a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;
- (b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company.

The requisition made shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

A meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by _____ the _____ Board.

Any reasonable expenses incurred by the requisitionists in calling a meeting shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

Procedure for meeting by requisitionists

Procedure for calling a meeting by requisitionists is given in section 100 read with Rule 17 of the Companies (Management and Administration) Rules 2014.

1. The Board shall, at the requisition made by,—
 - (a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;
 - (b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company. [Section 100(2)]
2. The requisition made shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company. [Section 100(3)]
3. If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Section 100(4)]
4. A meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board. [Section 100(5)]
5. The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting. [Rule 17(1)]
6. The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting. Requisitionists should convene meeting at registered office or in the same city or town where registered office is situated and such meeting should be convened on any day except national holiday. [Rule 17(2)]
7. If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114. [Rule 17(3)]
8. The notice shall be signed by all the requisitionists or by a requisitionists duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition. [Rule 17(4)]
9. No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary 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. [Rule 17(5)]
10. The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting. [Rule 17(6)]
11. Where the meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list

of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty-five days from the date of receipt of a valid requisition. [Rule 17(7)]

12. The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting. [Rule 17(8)]
13. Any reasonable expenses incurred by the requisitionists in calling a meeting shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting. [Section 100(6)]

PROCEDURE FOR CLASS MEETINGS

Regulation 6 of the Table F of Schedule I of the Act provides as under :

- (a) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of section 48, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.
- (b) To every such separate meeting, the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be at least two persons holding at least one-third of the issued shares of the class in question.

The articles of companies will have to be suitably modified or incorporated depending on the needs of each case on the above lines.

A class meeting will have to be convened by the Board of directors in the same manner as calling any other extraordinary general meeting. The Board will authorise the secretary or any other competent officer to issue the notice.

The other procedures/provisions relating to service of notice, persons to whom notice should be given, chairman, voting, proxy, minutes, poll etc. are similar to those discussed earlier in case of general meetings.

Further if the company is listed then it has to submit to the stock exchange, within 48 hours of conclusion of class meeting, details regarding the voting results in the format prescribed in clause 35A of the listing agreement.

PRACTICAL ASPECTS OF DRAFTING RESOLUTIONS AND MINUTES

Resolutions

All resolutions, no matter how simple they are, should be drafted in clear and distinct terms since resolutions embody the decisions of the meetings. The following points should be remembered while drafting resolutions, both for Board and general meetings :

- (a) All essential facts are included in the resolution - e.g., the resolution for re-appointment of a managing director should indicate that the re-appointment is subject to the approval of the Central Government if approval of the Central Government is required and should also cover the period of appointment, terms and conditions of such appointment.
- (b) Surplus and meaningless words or phrases should not be included in resolutions.
- (c) Reference to documents approved at a meeting should be clearly identified, e.g., the re-appointment of a

managing director should indicate that such appointment is on the terms and conditions contained in the draft agreement, a copy of which was placed before the meeting and initialled by the chairman for the purpose of identification.

- (d) Resolutions must indicate the relevant provisions or sections of the Act and the Rules pursuant to which they are being passed.
- (e) If a resolution is one which requires the approval of the Central Government or confirmation of the National Company Law Tribunal/Court, this must be stated in the resolution.
- (f) A resolution must indicate when it will become effective.
- (g) A resolution must confine itself to one subject matter and two distinct matters should not be covered in one resolution.
- (h) A resolution should be crisp, concise and precise and should be flexible enough to take care of eventualities.
- (i) Where lengthy resolutions have to be approved, they should be divided into paragraphs and should be arranged in their logical order having regard to the subject matter of the resolution.
- (j) A resolution must be so drafted that anybody not present at the meeting or anybody referring to it at a later date will know clearly what the decision was at that meeting without referring to any other document.

Minutes

The matters which must be covered whilst drafting the minutes of a meeting whether for Board or general meetings have been stated in Section 118 of the Act. Minutes are of two types namely, minutes of narration and minutes of resolution, but in practice the precise form of minutes is often a matter of discretion and lies somewhere between two methods or a combination of the two.

Minutes of Narration

These are records of events or items of business which do not require formal resolution to establish them. Generally these include minutes covering :

- (a) Names of those who are present at the meeting;
- (b) Signing of minutes of the previous meeting;
- (c) Recording of leave of absence;
- (d) Taking note of financial statements, reports, plans, etc., which are tabled and considered at the meeting;
- (e) Recording and tabling and consideration of correspondence; and
- (f) Taking a note of receipt of notice of interest from the directors.

Minutes of Resolution

These are records of formal decisions of directors or shareholders and are prefixed by the word 'Resolved', such a resolution may simply cover the resolution passed or alternatively may also indicate the name of the proposer and the seconder and showing the quantum of votes with which it was carried. Normally, however, especially minutes of Board meetings, do have a preamble or background leading to the decision namely the resolution that was passed. Such a recital or preamble or background is a brief explanation why it was necessary or expedient to pass the resolution.

The Secretary is responsible for convening the Board meetings and for drafting out the explanatory statement as well as the resolution for a general meeting. Minutes of a Board meeting can be drafted keeping in mind the points required to be taken into consideration whilst drafting resolutions and explanatory statement for a general meeting.

The background or preamble of a Board resolution will be basically the portion covered by material facts. Secondly, the resolution at a Board meeting will be similar to that of a resolution at a general meeting except that in case of Board minutes it will indicate that it is subject to the approval of both the shareholders and the Central Government/NCLT wherever required, whereas the resolution passed at a general meeting will only indicate that 'it is subject to the approval of the Central Government/NCLT/Other Regulatory Authorities, wherever required. Finally, the interest of directors shall be stated in the minutes of the Board meeting, as interested directors are not eligible to participate, discuss or vote on a resolution in which they are interested or concerned. Further, interested directors are also not counted for the purpose of quorum.

It will be evident from the above that except for inspection of documents which is covered in the explanatory statement, the resolution for a Board meeting will cover all other aspects of explanatory statement as well as resolution to be adopted at a general meeting.

Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot

Section 118 read with Rule 25 of Companies (management and Administration) Rule, 2014 provides for how to maintain minutes of general meetings. The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

It provides that every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed.

However, in case of a Specified IFSC public and private company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose.

A distinct minute book shall be maintained for each type of meeting namely:-

- (i) general meetings of the members;
- (ii) meetings of the creditors
- (iii) meetings of the Board; and
- (iv) meetings of each of the committees of the Board

Minutes need to be kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

Rule 25 (1)(d) provides that each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed –

- (i) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;
- (ii) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose;
- (iii) In case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period

of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Contents of Minutes:

- All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.
- In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain –
 - (a) the names of the directors present at the meeting; and
 - (b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes which, in the opinion of the Chairman of the meeting, –

- (a) is or could reasonably be regarded as defamatory of any person; or
- (b) is irrelevant or immaterial to the proceedings; or
- (c) is detrimental to the interests of the company.

Observance of Secretarial Standards

Section 118(10) provides that 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. [Not applicable to Specified IFSC public and private company]

Keeping and Preservation of Minutes Book

The minute books of general meetings shall be kept at the registered office of the company and shall be preserved permanently and kept in the custody of the company secretary or any director duly authorised by the board.

The minutes books of the Board and committee meetings shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

Matters requiring Sanction by Ordinary Resolution (Unless otherwise specified in the Articles)

- (i) To change name applied by furnishing wrong or incorrect information [Section 4(5)(ii)]
- (ii) To rectify the name of the company [Section 16(1)];
- (iii) After the Capital Clause of MOA for Limited Company having share capital [Section 13]
- (iv) Conversion of unlimited company into limited company [Section 65]
- (v) Acceptance of public deposit [Section 73(2)]
- (vi) Authorize a representative to participate in a general meeting [Section 113(1)]
- (vii) Appointment of auditor [Section 39]
- (viii) Removal of a Director [Section 169(1)]
- (ix) Company to have Board of directors [Section 149]

- (x) Appointment of directors [Section 152]
- (xi) Appointment of managing or whole time director [Section 196(4)]
- (xii) Re – appointment of retiring director
- (xiii) Remuneration of director [Section 197]
- (xiv) Related Party Transaction in certain companies or above certain threshold limit [Section 188(1)]

Matters requiring Special Resolution

- (1) Alteration of article under entrenchment [Section 5(3)]
- (2) Shifting of Registered Office outside local limit [Section 12(5)]
- (3) Alteration of Memorandum [Section 13(1)]
- (4) Change in object clause where money raised from public through prospectus and still has unutilized amount out of the money so raised [Section 13(8)]
- (5) Conversion of private company into public company [Section 14(1)]
- (6) Conversion of Public company into private company [Section 14(1)]
- (7) Conversion of private company into one person company
- (8) Variation in the terms of a contract referred to in the prospectus or objects for which the prospectus was issued [Section 27(1)]
- (9) Issue of Global Depository Receipt [Section 41]
- (10) Variation of Shareholders rights [Section 48(1)]
- (11) Issue of sweet equity shares [Section 54(1)]
- (12) Issue of share capital under employee's stock options [Section 62(1)(b)]
- (13) Issue of share capital to any person other than members or employees [Section 62(1)(c)]
- (14) Issue of convertible debenture [Section 62(1)(c)]
- (15) Reduction of Share Capital [Section 66(1)]
- (16) Funding of purchase of share by trust for benefit of employees [Section 67(3)]
- (17) Buy back of shares other than through Board Resolution [Section 68(2)]
- (18) Issue of Convertible Debenture [Section 71(1)]
- (19) Place of keeping registers and returns other than registered office [Section 94(1)]
- (20) Removal of auditor before expiry of term [Section 140(1)]
- (21) Appointment of more than fifteen directors [Section 149(1)]
- (22) Re- appointment of retiring independent director [Section 149(10)]
- (23) Specify a lesser number of companies in which a director may be a director [Section 165(2)]
- (24) Exercise of restricted powers by Board [Section 180(1)]
- (25) Approval of certain non – cash transaction with directors [Section 192(1)]

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- (26) Appointment of managing director or whole time director or manager who has attained age of seventy [Section 196(2)]
- (27) Appointment of managing or whole – time director or manager on certain terms [Section 197(4)]
- (28) Request for investigation of affairs of the Company [Section 210(1)]
- (29) Removal of the name of the company from the Register of Companies [Section 248(2)]
- (30) Resolution for winding up of company by Tribunal [Section 271(1)]
- (31) Applicability of Table – F of Schedule – I on company registered under Part – I of Chapter – XXI [Section 371(3)]

Matters requiring Special Notice

- (a) Resolution for appointment of an auditors other the retiring auditor at an annual general meeting [Section 140(4)].
- (b) Resolution at an annual general meeting to provide that a retiring auditor shall not be re-appointed [Section 140].
- (c) Resolution to remove a director before the expiry of his period of office [Section 169(2)]
- (d) Resolution to appoint another director in place of the removed director [(Section 169(5)]

Secretarial Standard on General Meetings: (SS-2)

Extracts from SS-2 are given below:

1. Convening a Meeting

1.1 Authority

A General Meeting shall be convened by or on the authority of the Board.

1.2 Notice

1.2.1 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.

1.2.2 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. 'Electronic means' means any communication sent by a company through its authorised and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the Member.

1.2.3. In case of companies having a website, the Notice shall be hosted on the website.

1.2.4 Notice shall specify the day, date, time and full address of the venue of the Meeting.

1.2.5 Notice shall clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon. In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice except where the Auditors or Directors to be appointed are other than the retiring Auditors or Directors, as the case may be.

1.2.6 Notice and accompanying documents shall be given at least twenty-one clear days in advance of the Meeting.

1.2.7 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.

1.2.8 No business shall be transacted at a Meeting if Notice in accordance with this Standard has not been given.

1.2.9 No items of business other than those specified in the Notice and those specifically permitted under the Act shall be taken up at the Meeting.

1.2.10 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.

1.2.11 A Meeting convened upon due Notice shall not be postponed or cancelled.

2. Frequency of Meetings

2.1 Annual General Meeting

Every company shall, in each Calendar Year, hold a General Meeting called the Annual General Meeting.

2.2 Extra-Ordinary General Meeting

Items of business other than Ordinary Business may be considered at an Extra-Ordinary General Meeting or by means of a postal ballot, if thought fit by the Board.

3. Quorum

3.1 *Quorum shall be present throughout the Meeting.*

3.2 A duly authorised representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person.

4. Presence of Directors and Auditors

4.1 Directors

4.1.1 If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.

4.1.2 Directors who attend General Meetings of the company and the Company Secretary shall be seated with the Chairman.

4.2 Auditors

The Auditors, unless exempted by the company, shall, either by themselves or through their authorised representative, attend the General Meetings of the company and shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors.

4.3 Secretarial Auditor

The Secretarial Auditor, unless exempted by the company shall, either by himself or through his authorised representative, attend the Annual General Meeting and shall have the right to be heard at such Meeting on that part of the business which concerns him as Secretarial Auditor.

5. Chairman

5.1 Appointment

The Chairman of the Board shall take the chair and conduct the Meeting. If the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within fifteen Minutes after the time appointed for holding the

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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 Articles.

5.2 The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting.

5.3 In case of public companies, the Chairman shall not propose any Resolution in which he is deemed to be concerned or interested nor shall he conduct the proceedings for that item of business.

6. Proxies

6.1 Right to Appoint

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 a Proxy need not be a Member.

6.2 Form of Proxy

6.2.1 An instrument appointing a Proxy shall be either in the Form specified in the Articles or in the Form set out in the Act.

6.2.2 An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.

6.3 Stamping of Proxies

An instrument of Proxy is valid only if it is properly stamped as per the applicable law. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid.

6.4 Execution of Proxies

6.4.1 The Proxy-holder shall prove his identity at the time of attending the Meeting.

6.4.2 An authorised representative of a body corporate or of the President of India or of the Governor of a State, holding shares in a company, may appoint a Proxy under his signature.

6.5 Proxies in Blank and Incomplete Proxies

6.5.1 A Proxy form which does not state the name of the Proxy shall not be considered valid.

6.5.2 Undated Proxy shall not be considered valid.

6.5.3 If a company receives multiple Proxies for the same holdings of a Member, the Proxy which is dated last shall be considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple Proxies shall be treated as invalid.

6.6 Deposit of Proxies

6.6.1 Proxies shall be deposited with the company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited and a Proxy shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.

6.6.2 If the Articles so provide, a Member who has not appointed a Proxy to attend and vote on his behalf at a Meeting may appoint a Proxy for any adjourned Meeting, not later than forty-eight hours before the time of such adjourned Meeting.

6.7 Revocation of Proxies

6.7.1 If a Proxy had been appointed for the original Meeting and such Meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.

6.7.2 A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.

6.7.3 A Proxy is valid until written notice of revocation has been received by the company before the commencement of the Meeting or adjourned Meeting, as the case may be.

6.7.4 When a Member appoints a Proxy and both the Member and Proxy attend the Meeting, the Proxy stands automatically revoked.

6.8 *Inspection of Proxies*

6.8.1 Requisitions, if any, for inspection of Proxies shall be received in writing from a Member entitled to vote on any Resolution at least three days before the commencement of the Meeting.

6.8.2 Proxies shall be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting.

6.8.3 A fresh requisition, conforming to the above requirements, shall be given for inspection of Proxies in case the original Meeting is adjourned.

6.9 *Record of Proxies*

6.9.1 All Proxies received by the company shall be recorded chronologically in a register kept for that purpose.

6.9.2 In case any Proxy entered in the register is rejected, the reasons therefor shall be entered in the remarks column.

7. Voting

7.1 *Proposing a Resolution*

Every Resolution shall be proposed by a Member and seconded by another Member.

7.2 *E-voting*

7.2.1 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.

7.2.2 *Voting at the Meeting*

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.

7.3 *Show of Hands*

Every company shall, at the Meeting, put every Resolution, except a Resolution which has been put to Remote e-voting, to vote on a show of hands at the first instance, unless a poll is validly demanded.

7.4 *Poll*

The Chairman shall order a poll upon receipt of a valid demand for poll either before or on the declaration of the result of the voting on any Resolution on show of hands.

7.5 *Voting Rights*

7.5.1 Every Member holding equity shares and, in certain cases as prescribed in the Act, every Member holding preference shares, shall be entitled to vote on a Resolution.

7.5.2 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.

7.6 *Second or Casting Vote*

Unless otherwise provided in the Articles, in the event of equality of votes, whether on show of hands or electronically or on a poll, the Chairman of the Meeting shall have a second or casting vote.

8. **Conduct of e-voting**

8.1 Every company that is required or opts to provide e-voting facility to its Members shall comply with the provisions in this regard.

8.2 Every company providing e-voting facility shall offer such facility to all Members, irrespective of whether they hold shares in physical form or in dematerialised form.

8.3. The facility for Remote e-voting shall remain open for not less than three days.

8.4 Board Approval

The Board shall:

- (a) appoint one or more scrutinisers for e-voting or the ballot process,
- (b) appoint an Agency;
- (c) decide the cut-off date for the purpose of reckoning the names of Members who are entitled to Voting Rights;
- (d) authorise the Chairman or in his absence, any other Director to receive the scrutiniser's register, report on e-voting and other related papers with requisite details.

8.5 *Notice*

8.5.1 Notice of the Meeting, wherein the facility of evoting is provided, shall be sent either by registered post or speed post or by courier or by e-mail or by any other electronic means.

8.5.2 Notice shall also be placed on the website of the company, in case of companies having a website, and of the Agency.

8.5.3 Notice shall inform the Members about procedure of Remote e-voting, availability of such facility and provide necessary information thereof to enable them to access such facility.

8.6 *Declaration of results*

8.6.1 Based on the scrutiniser's report received on Remote e-voting and voting at the Meeting, the Chairman or any other Director so authorised shall countersign the scrutiniser's report and declare the result of the voting forthwith with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.

8.6.2 The result of the voting, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere. Further, the results of voting alongwith the scrutiniser's report shall also be placed on the website of the company, in case of companies having a website and of the Agency, immediately after the results are declared.

8.6.3 The Resolution, if passed by a requisite majority, shall be deemed to have been passed on the date of the relevant General Meeting.

8.7 *Custody of scrutinisers' register, report and other related papers*

The scrutinisers' register, report and other related papers received from the scrutiniser(s) shall be kept in the custody of the Company Secretary or any other person authorised by the Board for this purpose.

9. Conduct of Poll

9.1 When a poll is demanded on any Resolution, the Chairman shall get the validity of the demand verified and, if the demand is valid, shall order the poll forthwith if it is demanded on the question of appointment of the Chairman or adjournment of the Meeting and, in any other case, within forty-eight hours of the demand for poll.

9.2 In the case of a poll, which is not taken forthwith, the Chairman shall announce the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to exercise their vote. The Chairman may permit any Member who so desires to be present at the time of counting of votes.

9.3 *Each Resolution put to vote by poll shall be put to vote separately.*

9.4 Appointment of scrutinisers

The Chairman shall appoint such number of scrutinisers, as he deems necessary, who may include a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company, to ensure that the scrutiny of the votes cast on a poll is done in a fair and transparent manner.

9.5 Declaration of results

9.5.1 Based on the scrutiniser's report, the Chairman shall declare the result of the poll within two days of the submission of report by the scrutiniser, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.

9.5.2 The result of the poll with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and in case of companies having a website, shall also be placed on the website.

9.5.3 The result of the poll shall be deemed to be the decision of the Meeting on the Resolution on which the poll was taken.

10. Prohibition on Withdrawal of Resolutions

Resolutions for items of business which are likely to affect the market price of the securities of the company shall not be withdrawn. However, any resolution proposed for consideration through e-voting shall not be withdrawn.

11. Rescinding of Resolutions

A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.

12. 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.

13. Reading of Reports

13.1 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.

13.2 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.

14. Distribution of Gifts

No gifts, gift coupons, or cash in lieu of gifts shall be distributed to Members at or in connection with the Meeting.

15. Adjournment of Meetings

15.1 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.

15.2 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 the provisions contained hereinabove relating to Notice.

15.3 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.

15.4 If a Meeting, other than 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, not being a National Holiday, or at such other time and place as may be determined by the Board.

15.5 If, within half an hour from the time appointed for holding a Meeting called by requisitionists, a Quorum is not present, the Meeting shall stand cancelled.

15.6 At an adjourned Meeting, only the unfinished business of the original Meeting shall be considered.

16. Passing of Resolutions by postal ballot

16.1 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.

16.2 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 which are required to provide e-voting facility shall provide such facility to its Members in respect of those items, which are required to be transacted through postal ballot.

16.3 Board Approval

The Board shall:

- (a) identify the businesses to be transacted through postal ballot;
- (b) approve the Notice of postal ballot incorporating proposed Resolution(s) and explanatory statement thereto;
- (c) authorise the Company Secretary or where there is no Company Secretary, any Director of the company to conduct postal ballot process and sign and send the Notice along with other documents ;
- (d) appoint one scrutiner for the postal ballot.
- (e) appoint an Agency in respect of e-voting for the postal ballot;
- (f) decide the record date for reckoning Voting Rights and ascertaining those Members to whom the Notice and postal ballot forms shall be sent.
- (g) decide on the calendar of events.
- (h) authorise the Chairman or in his absence, any other Director to receive the scrutiner's register, report on postal ballot and other related papers with requisite details.

16.4 Notice

16.4.1 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 e-mail or by any other electronic means at the address registered with the company.

16.4.2 In case of companies having a website, Notice of the postal ballot shall also be placed on the website.

16.4.3 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.

16.4.4 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.

16.4.5 Each item proposed to be passed through postal ballot shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon.

16.5 Postal ballot forms

16.5.1 The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutiniser.

16.5.2 The postal ballot form shall contain instructions as to the manner in which the form is to be completed, assent or dissent is to be recorded and its return to the scrutiniser.

16.5.3 A postal ballot form shall be considered invalid if:

- (a) A form other than one issued by the company has been used;
- (b) It has not been signed by or on behalf of the Member;
- (c) Signature on the postal ballot form doesn't match the specimen signatures with the company
- (d) It is not possible to determine without any doubt the assent or dissent of the Member;
- (e) Neither assent nor dissent is mentioned;
- (f) Any competent authority has given directions in writing to the company to freeze the Voting Rights of the Member;
- (g) The envelope containing the postal ballot form is received after the last date prescribed;
- (h) The postal ballot form, signed in a representative capacity, is not accompanied by a certified copy of the relevant specific authority;
- (i) It is received from a Member who is in arrears of payment of calls;
- (j) It is defaced or mutilated in such a way that its identity as a genuine form cannot be established;
- (k) Member has made any amendment to the Resolution or imposed any condition while exercising his vote.

16.6 Declaration of results

16.6.1 Based on the scrutiniser's report, the Chairman or any other Director authorised by him shall declare the result of the postal ballot on the date, time and venue specified in the Notice, with details of the number of votes cast for and against the Resolution, invalid votes and the final result as to whether the Resolution has been carried or not.

16.6.2 The result of the voting with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not, along with the scrutiniser's report shall be displayed on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and also be placed on the website of the company, in case of companies having a website.

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16.6.3 The Resolution, if passed by requisite majority, shall be deemed to have been passed on the last date specified by the company for receipt of duly completed postal ballot forms or e-voting.

16.7 *Custody of scrutiniser's registers, report and other related papers*

The postal ballot forms, other related papers, register and scrutiniser's report received from the scrutiniser shall be kept in the custody of the Company Secretary or any other person authorised by the Board for this purpose.

16.8 *Rescinding the Resolution*

A Resolution passed by postal ballot shall not be rescinded otherwise than by a Resolution passed subsequently through postal ballot.

16.9 *Modification to the Resolution*

No amendment or modification shall be made to any Resolution circulated to the Members for passing by means of postal ballot.

17. Minutes

17.1 *Maintenance of Minutes*

17.1.1 Minutes shall be recorded in books maintained for that purpose.

17.1.2 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.

17.1.3 Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

17.1.4 The pages of the Minutes Books shall be consecutively numbered.

17.1.5 Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.

17.1.6 Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume.

17.1.7 Minutes Books shall be kept at the Registered Office of the company or at such other place, as may be approved by the Board.

17.2 *Contents of Minutes*

17.2.1 General Contents

17.2.1.1 Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.

17.2.1.2 Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.

17.2.2 Specific Contents

17.2.2.1 Minutes shall, *inter alia*, contain:

- (a) The Record of election, if any, of the Chairman of the Meeting.
- (b) The fact that certain registers, documents, the Auditor's Report and Secretarial Audit Report, as prescribed under the Act were available for inspection.
- (c) The Record of presence of Quorum.
- (d) The number of Members present in person including representatives.
- (e) The number of proxies and the number of shares represented by them.

- (f) The presence of the Chairmen of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee or their authorised representatives.
- (g) The presence if any, of the Secretarial Auditor, the Auditors, or their authorised representatives, the Court/Tribunal appointed observers or scrutinisers.
- (h) Summary of the opening remarks of the Chairman.
- (i) Reading of qualifications, observations or comments or other remarks on the financial transactions or matters which have any adverse effect on the functioning of the company, as mentioned in the report of the Auditors.
- (j) Reading of qualifications, observations or comments or other remarks as mentioned in the report of the Secretarial Auditor.
- (k) Summary of the clarifications provided on various Agenda Items.
- (l) In respect of each Resolution, the type of the Resolution, the names of the persons who proposed and seconded and the majority with which such Resolution was passed.
- (m) In the case of poll, the names of scrutinisers appointed and the number of votes cast in favour and against the Resolution and invalid votes.
- (n) If the Chairman vacates the Chair in respect of any specific item, the fact that he did so and in his place some other Director or Member took the Chair.
- (o) The time of commencement and conclusion of the Meeting.

17.2.2.2 In respect of Resolutions passed by e-voting or postal ballot, a brief report on the e-voting or postal ballot conducted including the Resolution proposed, the result of the voting thereon and the summary of the scrutiniser's report shall be recorded in the Minutes Book and signed by the Chairman or in the event of death or inability of the Chairman, by any Director duly authorised by the Board for the purpose, within thirty days from the date of passing of Resolution by e-voting or postal ballot.

17.3. *Recording of Minutes*

17.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.

17.3.2 Minutes shall be written in clear, concise and plain language.

17.3.3 Each item of business taken up at the Meeting shall be numbered.

17.4. *Entry in the Minutes Book*

17.4.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.

17.4.2 The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.

17.4.3 Minutes, once entered in the Minutes Book, shall not be altered.

17.5. *Signing and Dating of Minutes*

17.5.1 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.

17.5.2 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.

17.6. *Inspection and Extracts of Minutes*

17.6.1 Directors and Members are entitled to inspect the Minutes of all General Meetings including Resolutions passed by postal ballot.

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17.6.2 Extract of the Minutes shall be given only after the Minutes have been duly signed. However, any Resolution passed at a Meeting may be issued even pending signing of the Minutes, provided the same is certified by the Chairman or any Director or the Company Secretary.

18. Preservation of Minutes and other Records

18.1 Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.

18.2 Office copies of Notices, scrutiniser's report, and related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.

18.3 Minutes Books shall be kept in the custody of the Company Secretary.

19. Report on Annual General Meeting

Every listed company shall prepare a report on Annual General Meeting in the prescribed form, including a confirmation that the Meeting was convened, held and conducted as per the provisions of the Act.

20. Disclosure

The Annual Return of a company shall disclose the date of Annual General Meeting held during the financial year.

Effective Date

This Standard came into effect since 1st July, 2015.

ANNEXURES

NOTICE FOR BOARD MEETING

Notice for Board Meeting may be prepared and issued on the following pattern or as near thereto as may be possible.

NOTICE OF BOARD MEETING¹ Mr.

Director,

New Delhi

Dear Sir,

A meeting of the Board of Directors of the Company will be held on (day of the week), the (date) (month) (year) at (a.m./p.m.) at the Registered Office of the Company.² The Agenda of the business to be transacted at the meeting is enclosed/will follow.³

You are requested to make it convenient to attend the Meeting.

Yours faithfully,

(Signature)

(Name) (Designation)⁴

DRAFTING OF AGENDA AND NOTES ON AGENDA – PRACTICAL ASPECTS

1. While preparing the Agenda and notes thereon, good drafting is one of the essential aspects. While part of the Agenda consists of routine items, the drafting of which does not pose any problem, where there are important or non-routine items, the Agenda has to be prepared carefully, employing not only good drafting skill but also an understanding of commercial considerations and the business environment. For the purpose :

- (a) Divide the Agenda into two parts: - the first part containing usual or routine items and the second part containing other items which can further be bifurcated as (i) items for approval; and (ii) items for information/ noting.
- (b) For each item of the Agenda give an explanatory note followed by a draft of the resolution, if any, proposed to be passed. The explanatory note should give sufficient details of the proposal, including the proposed resolution, if any, with references to the provisions of the Companies Act, the Memorandum and Articles of Association, other relevant documents, decisions of previous Board or general meetings, statutory enactments, case laws, etc. For the purpose, the note should be drafted under the following heads :
 - (i) Background (or Introduction);
 - (ii) Proposal;
 - (iii) Provisions of Law;

1. This should be on the letter-head of the Company.

2. If at some other venue, give detailed location of such venue.

3. The Agenda, together with the notes thereon, may either be sent alongwith the Notice or may follow at a later date.

4. The telephone numbers and e-mail address of the person signing the Notice should be given so that Directors may confirm their attendance or otherwise communicate directly with such person.

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- (iv) Decision(s) required; and
 - (v) Interest, if any, of any Directors.
2. The Secretary should specify a date by which items requiring approval/ noting by the Board should be given to him by the concerned Departments for inclusion in the Agenda and a deadline for furnishing papers in support of each such item.
 3. The Secretary should refer to the Agenda of previous Meetings, to see whether any items had been deferred and should include them for discussion at the ensuing Meeting.
 4. The Secretary should also refer to the Minutes of the Meeting held during the corresponding period of the previous year to see whether there are any recurring periodic items (e.g. interim/final dividend, quarterly results).
 5. The Secretary should finalise the Agenda in consultation with the Chairman/Managing Director.
 6. Notes on policy matters should present clear-cut issues in order to facilitate due deliberations and precise decisions at the Meeting.
 7. Circulation of draft resolutions to be passed at the Meeting would enable Directors to know in advance as to what they are required to consider and save time at the Meeting, facilitate discussion and simplify the preparation of minutes of the Meeting.
 8. The names of those persons who will be attending the Meeting as invitees should be given in the notes to the relevant items of the Agenda. e.g. if there is an item for approval of the Capital Budget, the note thereon should state that Mr. A, Chief Financial Officer, will make a presentation on the Budget.
 9. As a good corporate secretarial practice, the Secretary should keep, in addition to a record of matters to be discussed, a separate folder of all such correspondence, notes and documents which need to be dealt with at the Meeting. In preparing the Agenda, the Secretary should refer to this folder to ensure that all items which require the decision of the Board are included in the Agenda.
 10. A separate Agenda item number should be given for items which are brought forward for discussion from a previous Meeting rather than placing them under the omnibus Agenda item of "matters arising from previous Meetings" for example :

"Item No. 9. DISINVESTMENT MANDATE

To note the appointment of the Company as advisors for the disinvestment process of ABC Limited (Refer to Item No. 18 of the minutes of the Meeting held on.....)."
 11. A few extra copies of the Agenda should always be kept available at the Meeting.

**ILLUSTRATIVE AGENDA OF THE FIRST MEETING OF THE BOARD OF DIRECTORS OF
..... COMPANY LIMITED, TO BE HELD ON (DAY), (DATE,
MONTH AND YEAR) AT (TIME) AT..... (VENUE)**

[Annexre B of Secretarial Standard -1]

1. To appoint the Chairman of the Meeting.
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company and ratify the registered document of the title of

the premises of the registered office in the name of the company or a Notarised copy of lease / rent agreement in the name of the company.

5. To note the first Directors of the company.
6. To read and record the Notices of disclosure of interest given by the Directors.
7. To consider appointment of Additional Directors.
8. To consider appointment of the Chairman of the Board.
9. To consider appointment of the first Auditors.
10. To adopt the Common Seal of the company.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorise printing of share certificates and correspondence with the depositories, if any.
13. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
14. To approve and ratify preliminary expenses and preliminary agreements.
15. To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers.
16. To authorise Director(s) of the company to file a declaration with the ROC for commencement of business.

NOTES ON AGENDA FOR THE FIRST BOARD MEETING

Item No. 1

Item : To appoint chairman of the meeting

Note: In terms of Article of the Articles of Association of the Company, the Directors to select one of them as Chairman of the meeting.

Item No. 2

Item : To note the certificate of incorporation of the company, issued by the Registrar of Companies.

Note: Original Certificate of Incorporation No. dated received from the Registrar of Companies together with a copy of the Memorandum and Articles of Association will be placed before the meeting.

Item No. 3

Item : To take note of Memorandum and Articles of Association of Company, as registered.

Note: Printed copies of the Memorandum and Articles of Association as registered with the Registrar of Companies will be placed before the meeting.

Item No. 4

Item : To note the situation of the registered office of the company.

Note: The Board may kindly take note of the situation of the registered office of the company as intimated to the Registrar of Companies.

Item No. 5

Item : To note the appointment of the first directors of the Company

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Note: Mr and Mr. are the first directors as stated in Article of the Articles of Association of the company and as intimated to the Registrar of Companies.

Item No. 6

Item : To read and record the notices of disclosure of interest given by the Director.

Note: The Board may kindly record the notices of disclosure of interest given by Directors of the Company.

Item No. 7

Item : To elect chairman, appoint Managing Director and Secretary.

Note: Article of the Articles of Association of the company relating to the Chairman of the Board be referred to the Board. The Board may kindly appoint a managing director and a secretary of the company.

Item No. 8

Item : To consider the appointment of first auditors of the company.

Note: Certificate in writing received from the proposed Auditors will be placed before the meeting for appointment of the first Auditors of the company.

Item No. 9

Item : To approve preliminary expenses and preliminary contracts.

Note: Statement of preliminary expenses and preliminary contracts incurred will be placed before the meeting.

Item No. 10

Item : To adopt the common seal of the company.

Note: Common Seal of the company will be placed before the meeting for approval, adoption and safe custody.

Item No. 11

Item : To authorise printing of the Share Certificate form.

Note: Design sample of Share Certificate will be placed before the meeting for approval and printing.

Item No. 12

Item : To place draft statement in lieu of prospectus.

Note: Draft statement in lieu of Prospectus will be placed before the meeting.

Item No. 13

Item : To consider plan of action for commencement of business.

Note: Board be informed that Certificate of Commencement of Business is essential for commencement of business by a public company.

Item No. 14

Item: To place copies of agreements entered into prior to incorporation.

Note: Copy of the Memorandum of Understanding entered into between Mr..... Chairman of the company and M/s..... be placed before the Board.

Item No. 15

Item : To appoint bankers and to open bank account of the Company.

Note: Board be informed about the bankers of the company and the opening of the Company's Bank Account with Bank.

Item No. 16

Item : To decide payment of sitting fees

Note: Board be informed about payment of sitting fees to the Directors in accordance with Article..... of Articles of Association of the Company.

Item No. 18

Item : To consider any other matter with the permission of the chair.

Note: Board may discuss any other item apart from notified items of business with the permission of the chair.

MINUTES OF THE FIRST BOARD MEETING OF, BOARD MEETING NO 1/2014 HELD ON (DAY), (DATE, MONTH AND YEAR), AT (VENUE), FORM (COMMENCEMENT TIME) TO (CONCLUSION TIME)

Present:

- 1.
- 2.
- 3.
- 4.

In attendance:

.....

Company Secretary

- 1. Chairman of the Meeting

Mr was unanimously elected the Chairman of the Meeting.

- 2. Incorporation of the company

The Board was informed that the company had been incorporated on..... and the Directors noted the Certificate of Incorporation vide CIN ., dated issued by the Registrar of Companies,..... . The Board also took note of the filing of Forms INC-1, 11, 21 and 22 with the Registrar of Companies.

- 3. Memorandum and Articles of Association

A printed copy of the Memorandum and Articles of Association of the company as registered with the Registrar of Companies was placed before the Meeting and noted by the Board.

4. Registered Office

The Board noted that the Registered Office of the company will be at....., the intimation of which had already been given to the Registrar of Companies.

5. First Directors

The Board noted that Mr., Mr. and Mr..... were named as the first Directors of the Company in the Articles of Association of the company.

6. General notices of disclosure of interest

General notices of interest under Section 184(1) of the Companies Act 2013, received from Mr., Mr. and Mr....., Directors of the company, on, were placed on the table and the contents thereof were read and noted by the Board.

7. Chairman and Vice-Chairman of the Board

The Board decided to appoint a Chairman of the Board, who would be the Chairman for all Meetings of the Board as also for General Meetings of the Company and, accordingly, the following Resolution was unanimously passed :

“RESOLVED THAT, until otherwise decided by the Board, Mr..... be and is hereby elected Chairman of the Board of Directors and also for all General Meetings of the company;”

“RESOLVED FURTHER THAT, until otherwise decided by the Board, Mr. be and is hereby elected Vice-Chairman of the Board of Directors of the company”.

8. Appointment of Auditors

The Chairman stated that Messrs, Chartered Accountants,, had been approached for their consent to their appointment as the auditors of the company. A letter received from Messrs....., conveying their consent was placed before the Directors and the Board unanimously passed the following Resolution :

“RESOLVED THAT Messrs, Chartered Accountants,....., be and are hereby appointed pursuant to Section 139(6) of the Companies Act, 2013, Auditors of the company to hold office from the date of this meeting till the conclusion of the first Annual General Meeting of the company”.

9. Appointment of Company Secretary

The Chairman informed the Board that Mr., who holds the prescribed qualification for appointment as Company Secretary and who is competent to hold the position of secretary of the company should be considered for appointment as Company Secretary. The Board agreed and the following Resolution was unanimously passed :

“RESOLVED THAT Mr., aged....., holding the prescribed qualification be and is hereby appointed as Secretary of the company, on the terms specified in the draft agreement/appointment letter, placed on the table duly initialled by the Chairman for the purpose of identification.

“RESOLVED FURTHER THAT the Company Secretary do perform the duties which may be performed by a secretary under Section 205 of the Companies Act, 2013, and any other duties assigned to him by the Board or the Chief Executive and do report to the Chief Executive of the company”.

10. Appointment of bankers

The Chairman informed the Board that a current account in the name of the company be opened inBank. The Board agreed and the following Resolution was passed unanimously :

“RESOLVED THAT a current account be opened in the name of Limited with the Bank,, and that the Bank be instructed to honour all cheques, bills of exchange, promissory notes or other orders which may be drawn by/accepted/made on behalf of the company and to act on any instructions so given relating to the account whether the same be overdrawn or not or relating to the transactions of the company and that any two of the following directors/officers of the company, jointly, namely :

- (a) Mr ...Director
- (b) Mr ...Director
- (c) Mr ...General Manager (Finance)
- (d) Mr ...Company Secretary

be and are hereby authorised to sign on behalf of the company cheques or any other instruments/ documents drawn on or in relation to the said account and the signatures shall be sufficient authority and shall bind the company in all transactions between the Bank and the company”.

11. Printing of Share Certificates

The Chairman informed the Board that it would be necessary to print share certificates for allotment of shares to the subscribers to the Memorandum of Association as well as for any further issue of capital. A format of the share certificate was placed on the table and the Board passed the following Resolution :

“RESOLVED THAT equity share certificates of the company be printed, in the format placed before the meeting and initialled by the Chairman for the purpose of identification, and that the certificates bear serial Nos. 1 to 1,00,000.

“RESOLVED FURTHER THAT the stock of blank share certificates be kept in safe custody with Mr.”.

12. Issue of Share certificates to the subscribers

The Chairman informed the Board that Mr., Mr..... and Mr., who are subscribers to the Memorandum of Association of the company, had each agreed to take and have taken 10 (ten) equity shares in the company. He further informed the Board that, pursuant to Section 56(4) of the Companies Act, 2013, the names of the said subscribers to the Memorandum of Association have been entered as the members in the register of members and that equity share certificates be issued to them. The following Resolution was passed unanimously:

“RESOLVED THAT Mr., Mr. and Mr....., the subscribers to the Memorandum of Association of the company who had agreed to take and have taken 10 (ten) equity shares each, of the company, be issued equity share certificates under

the Common Seal of the company and that Mr. and Mr., Directors of the company, and Mr., Company Secretary, shall sign the said certificates”.

13. Approval of Statement of Preliminary Expenses incurred

The Chairman placed before the Meeting a statement of expenses incurred in connection with the formation of the company. The Board approved and passed the following Resolution :

“RESOLVED THAT preliminary expenses of `incurred/contracted be and are hereby approved and confirmed as per the statement submitted by the Chairman.”

“RESOLVED FURTHER THAT the preliminary expenses of ` incurred by Mr., Director of the Company, in the matter of incorporation of the Company, be and are hereby approved and the same be reimbursed to the said Mr., Director, out of the funds of the company”.

14. Next Meeting

It was decided to hold the next Board Meeting at a.m./p.m. on (Day),(Date, Month and Year) and..... (Venue).

15. Termination of the Meeting

The Meeting ended with a vote of thanks to the chair.

.....
Chairman

Entered on

Date

**AGENDA OF A SUBSEQUENT MEETING OF THE BOARD OF DIRECTORS AGENDA FOR THE
..... MEETING OF THE BOARD OF DIRECTORS OF COMPANY LTD., TO
BE HELD ON (DAY), (DATE, MONTH AND YEAR), AT
(TIME), AT (VENUE)**

1. Attendance and Minutes

- 1.1 To elect a Chairman of the Meeting (in case there is no permanent Chairman);
- 1.2 To grant requests from directors for leave of absence, if any. ;
- 1.3 To note the minutes of the previous Meeting;
- 1.4 To note resolutions passed by circulation;
- 1.5 To note minutes of meetings of Committee(s);
- 1.6 To note certificate of compliance.

2. Directors (including, where applicable, Alternate Directors)

- 2.1 To read and take note of the disclosure of interests;
- 2.2 To read and take note of the disclosure of shareholdings;
- 2.3 To sign the register of contracts;
- 2.4 To give consent to a contract in which a Director has an interest;

- 2.5 To consider appointment(s) and fixation of remuneration(s) of managerial personnel;
 - 2.6 To consider and to give consent for the appointment of a Managing Director/Manager who is already a Managing Director/Manager of another company;
 - 2.7 To take note of nomination of Director(s) made by financial institution(s)/BIFR/Central Government/bank(s);
 - 2.8 To appoint additional Directors(s);
 - 2.9 To appoint a Director to fill the casual vacancy of a Director;
 - 2.10 To accept/take note of resignation(s) of Director(s)/withdrawal of nominee Director(s);
 - 2.11 To consider loans to Directors;
 - 2.12 To consider payment of commission to Non-Executive Directors;
 - 2.13 To constitute Committees of the Board;
 - 2.14 To delegate powers to Managing/Whole-time Directors.
3. Shares
- 3.1 To authorise printing of new share certificates;
 - 3.2 To approve requests for transfer/transmission/transposition of shares;
 - 3.3 To authorize issue of duplicate share certificates;
 - 3.4 To authorise issue of share certificates without surrender of letters of allotment;
 - 3.5 To refuse to register transfer of shares;
 - 3.6 To consider the position of dematerialized and rematerialized shares and the beneficial owners.
4. Share Capital
- 4.1 To make allotment of shares;
 - 4.2 To make calls on shares;
 - 4.3 To forfeit shares;
 - 4.4 To issue bonus shares;
 - 4.5 To issue “rights” shares;
 - 4.6 To make fresh issue of share capital;
 - 4.7 To authorise buy-back of shares.
5. Debentures, Loans and Public Deposits
- 5.1 To consider matters relating to issue of debentures including appointment of Debenture Trustees;
 - 5.2 To borrow money otherwise than on debentures and by way of Commercial Paper, Certificate of Deposit, etc.;
 - 5.3 To approve the text of the advertisement for acceptance of fixed deposits and to sign the same.
6. Long term loans from financial institutions/banks
- 6.1 To authorise making applications/availing long term loans from financial institutions/banks and to authorise officers to accept modifications, approve the terms and conditions of loans, execute loan and other

agreements and to affix the Common Seal of the company on documents;

- 6.2 To accept terms contained in the letter of intent of financial institutions/banks;
- 6.3 To approve draft loan agreements and other documents, as finalised;
- 6.4 To authorise execution of hypothecation agreements and to create charges on the company's assets;
- 6.5 To note the statement of total borrowings/indebtedness of the company.

In case of availing of loans/financial assistance from banks/financial institutions, the draft resolutions are generally provided by the banks/ financial institutions, which may be modified as appropriate and circulated to the Directors along with the item of the Agenda.

7. Banking Facilities

- 7.1 To open/operate/close bank accounts;
- 7.2 To delegate the authority to avail bank loans;
- 7.3 To renew/enhance banking facilities;
- 7.4 To open special/separate banks accounts for dividend, deposits and unpaid amounts thereof.

8. Investments, Loans and Guarantees

- 8.1 To consider investment in shares of subsidiary companies;
- 8.2 To consider inter-corporate investments in shares/debentures;
- 8.3 To consider other investments;
- 8.4 To consider placing inter-corporate deposits;
- 8.5 To consider giving guarantees for loans to other bodies corporate or security in connection with such loans.

9. Review of Operations

- 9.1 To review operations;
- 9.2 To consider periodic performance report of the company;
- 9.3 To consider payment of interim dividend.

Brief notes on the working of the company or its units or branches should contain figures comparable with the figures for the corresponding period of the previous year and that of the budget or forecast for that period.

10. Projects

- 10.1 To note the progress of implementation of modernization/new project(s) in hand;
- 10.2 To consider expansion/diversification.

11. Capital Expenditure

- 11.1 To sanction capital expenditure for purchasing/replacing machinery and other fixed assets;
- 11.2 To approve sale of old machinery/other fixed assets of the company.

The notes on agenda items relating to capital expenditure should include the necessity of incurring the expenditure, quantum of expenditure to be incurred, mode of financing the capital expenditure, the pay back period and the time schedule by which the capital expenditure will be incurred or, in case of project

expenditure, the time by which the project will be completed.

12. Revenue Expenditure

- 12.1 To approve donations;
- 12.2 To sanction grants to public welfare institutions;
- 12.3 To sanction staff welfare grants and other revenue expenditure;
- 12.4 To approve writing off bad debts.

13. Auditors, etc.

- 13.1 To appoint an auditor to fill a casual vacancy in the office of the auditor;
- 13.2 To appoint a cost auditor;
- 13.3 To appoint a Practising Company Secretary.

14. Personnel

- 14.1 To appoint, accept the resignation of, promote or to transfer any senior officer of the company;
- 14.2 To approve/amend rules relating to employment/employee welfare schemes, and provident fund/superannuation/gratuity schemes of the company;
- 14.3 To sanction loan limits for officers and staff for personal exigencies or for purchase of a vehicle, land, house, etc.;
- 14.4 To formulate personnel policies.

15. Legal Matters

- 15.1 To note and to give directions on significant matters;
- 15.2 To consider amendment to memorandum/articles of association;
- 15.3 To approve agreements.

16. Restructuring

- 16.1 To approve merger/demerger/amalgamation;
- 16.2 To consider formation of joint ventures;
- 16.3 To consider subsidiarisation/desubsidiarisation of other companies.

17. Delegation of Authority

- 17.1 To nominate occupier/factory manager under Factories Act; an owner under Mines Act;
- 17.2 To delegate powers to representatives to attend general meetings of companies in which the company holds shares;
- 17.3 To delegate powers to approve transfers, transmission, issue of duplicate share certificates/allotment letters, etc.;
- 17.4 To delegate authority with regard to signing of contracts, deeds and other documents; execution of indemnities, guarantees and counter guarantees; filing, withdrawing or compromising legal suits;
- 17.5 To delegate authority with regard to registration, filing of statutory returns, declarations, etc. under company law, central excise, sales tax, customs and other laws;
- 17.6 To delegate powers relating to appointments, confirmations, discharge, dismissal, acceptance of

resignations, granting of increments and promotions, taking disciplinary actions, sanctioning of leave, travel bills and welfare expenses, etc.;

17.7 To delegate powers to grant advances to contractors, suppliers, agents, etc.;

17.8 To delegate powers relating to purchase/construction and sale of stores, spare parts, raw materials, fuel and packing materials; fixed assets; shares or debentures of companies; government securities; and to fix limits upto which executives can authorise or sanction payments; operating of bank accounts; etc.;

17.9 To delegate powers to engage consultants, retainers, contractors, etc.;

17.10 To delegate powers to provide financial assistance to employees, etc. for personal exigencies or for purchase of a vehicle, house, etc.;

17.11 To delegate powers to allow rebates/discounts on sales; to incur expenditure on advertisements, to settle claims, to sanction donations; etc.

18. Annual Accounts

18.1 To consider approval of annual accounts – after approval thereof by the Audit Committee, if any;

18.2 To approve appropriation of profits and transfers to reserves;

18.3 To consider recommending dividends to shareholders;

18.4 To take note of the Auditors' report;

To have a fruitful discussion on the Agenda relating to approval of accounts, it would be advisable to highlight items which have had an impact on the financial results for that year and also to circulate a copy of the draft accounts in advance.

Where the Board is to consider the rate of dividend, the note should contain the restrictions imposed under the Companies Act and by the financial institutions; past dividend record of the company; dividend policies of companies of comparative standing in the same industry; profitability and liquidity position of the company; its future plans and capital commitments, etc.

19. Annual General Meeting

19.1 To approve the Directors' report;

19.2 To ascertain the Directors retiring by rotation;

19.3 To convene annual/extraordinary general meeting;

19.4 To close the register of members;

19.5 To consider matters requiring shareholders' approval;

19.6 To approve the Notice of the General Meeting.

20. Miscellaneous matters

20.1 To consider matters arising out of the Minutes of the previous Meeting;

20.2 To fix the date and venue of the next Meeting;

20.3 Any other matter with the permission of the Chair

NOTES ON AGENDA OF BOARD MEETING

Board meeting on..... (day) (date).....2014...at the
(Venue) at (time)

Agenda Item No. 1

Note : The Chairman of the Board shall take the Chair. In his absence, any one of the director shall be elected Chairman of the meeting.

Agenda Item No. 2

Leave of absence

Notes : Leave of absence will be granted to those Directors who have expressed their inability to attend the Board meeting.

Agenda Item No. 3

Confirmation of the Minutes of last Board meeting

Notes : The Minutes of the last Board Meeting held on of which a copy was circulated amongst the directors of the company, are submitted herewith for confirmation and signatures by the Chairman of the meeting.

Agenda Item No. 4

Resolution passed by circulation

Notes : A copy of the resolution passed by circulation on by the directors of the company is circulated herewith for taking on record.

Agenda Item No. 5

Resolution passed at the Committee meeting

Notes : A copy of the resolution passed at the meeting of the Committee of Directors held on is circulated herewith for taking on record.

Agenda Item No. 6

Registration of transfer of Shares

Notes : Details of registration of transfer of shares approved subsequent to the last Board Meeting are submitted for taking on record.

Agenda Item No. 7

Notice of Interest, if any, received from Directors

Notes : Notice dated received from that he has joined the Board of Co. Ltd. with effect from will be submitted at the meeting for taking on record.

Agenda Item No. 8

Managing Director's Report on the performance of the company

Notes : The Managing Director will brief the Board on the performance of the Company since the last meeting and the performance during the year ended The statement of working results for the months of April and May of the current financial year are submitted.

Statutory Compliance Certificate is also submitted for taking on record.

Agenda Item No. 9

Cost Audit

Notes : The Central Government is vested under Section 148 with the power to order audit of its cost accounts. As maintenance of cost accounts is applicable to the Company, the Department of Company Affairs has issued an

order directing an audit of cost accounts for every year. The auditor shall be appointed by the Board subject to the approval of the Central Government. The following resolution is submitted for the consideration and approval of the Board:-

Draft Resolution:

“RESOLVED THAT pursuant to the order No..... dated..... of the Central Government, copy whereof was placed on the table directing audit of cost accounts of the Company every year, Mr..... Cost Accountant, Membership No. who has certified that the appointment, if made, will be in accordance with Section 148 of the Act, be appointed for the year 2013-2014 subject to the approval of the Central Government.”

“RESOLVED FURTHER THAT a remuneration of ` be paid to the Cost Auditor plus reimbursement of incidental expenses incurred by the Auditor for carrying out the cost audit.”

“RESOLVED FURTHER THAT the Secretary be entrusted with responsibility to obtain the approval of the Central Government to the appointment of Mr..... as Cost Auditor.”

Agenda Item No. 11

Appointment of a Whole-time Director

Notes : As the activities of the company are growing, it is proposed to appoint Mr..... who has more than 25 years of experience in the company as a Director on the Board, which will be held by him as a Whole-time Director having been in the full-time employment of the Company. He will be paid remuneration in accordance with the Schedule V of the Act and his appointment will be subject to the approval of the Company in general meeting. If the proposal is found in order, the Board may consent to the following resolution:

Draft Resolution:

“RESOLVED THAT Mr. who is in the employment of the company, be appointed a Director on the Board and be deemed to be a Whole-time Director.”

RESOLVED FURTHER THAT, subject to the approval of the Company in general meeting, Mr. be and is hereby appointed a Whole-time Director for a period of five years with effect from on the basis of the remuneration, terms and conditions set out hereunder which are in conformity with Schedule V to the Act, namely:

1. (a) Salary : ` per month.
(b) Commission : At the rate of 1 per cent of the net profit of the company.
2. Perquisites

CATEGORY 'A'

(i) Housing :

- (I) The expenditure by the company on hiring accommodation to the appointee shall not exceed 60 per cent of the salary over and above 10 per cent payable by him.
OR
- (II) Where the accommodation is owned by the company, 10 per cent of the salary of the appointee shall be deducted by the company towards house rent.
OR
- (III) In case no accommodation is provided by the company, house rent allowance shall be paid to the appointee not exceeding 60 per cent of his salary.

- (ii) Expenditure may be incurred by the company on gas, electricity water and furnishings in respect of the accommodation upto a ceiling of 10 per cent of the salary of the appointee.
- (iii) Medical reimbursement to the appointee for self, and family upto one month's salary in a year or three months' salary over a period of three years.
- (iv) Leave travel concession to the appointee and his family once in a year as per rules of the company.
- (v) Club fees will be paid by the company in respect of appointee's membership subject to a maximum of two clubs. Admission and life membership fee can not be paid by the company.
- (vi) Personal accident insurance may be arranged for the appointee subject to the condition that the annual premium shall not exceed ` 4000.

CATEGORY 'B'

The following perquisites will also be extended to the appointee:

1. Company's contribution to provident fund and superannuation fund or annuity fund where the said contributions are upto the limits which are not taxable under the Income Tax Act, 1961.
2. Gratuity should not exceed half month's salary for each completed year of service. Encashment of leave at the end of the term will not also be included in the monetary value of perquisites.

CATEGORY 'C'

Provision of car to the incumbent for use on company's business and of telephone at residence will not be considered as perquisite.

"RESOLVED FURTHER THAT the necessary certificate signed by the secretary confirming compliance with the requirements of Schedule V in respect of the appointment of the Whole-time Director be filed with the Registrar of Companies in terms of Section 149 of the Act and that an agreement on the basis of the draft circulated to the Directors and hereby approved be entered into with the Whole-time Director after the company in general meeting approves the appointment which will be signed on behalf of the company by any two directors and the common Seal of the Company will be affixed in their presence."

"RESOLVED FURTHER THAT the said appointment shall be placed for approval by the general meeting at the forthcoming Annual General Meeting by way of ordinary resolution."

Agenda Item No. 12

(1) Remuneration to Non-Executive Directors

Notes : Section 197 of the Act provides that a Director who is neither a whole-time Director nor a Managing Director or all such Directors may be paid remuneration by way of commission if the proposal is approved by the general meeting by a special resolution. Such commission cannot ordinarily exceed one per cent of the net profits of a company where there is already a Managing Director and/or Whole-time Director in the company concerned or three per cent of the net profits where the company does not have Managing/Whole-time directors.

Further as far as the Articles of association of the company is concerned, there is no provision in the Articles permitting (the Board to pay commission to the non-executive directors. Hence the articles of the Company needs to be modified to incorporate a suitable provision for the payment of commission to such Directors.

Thus to enable the Board to implement the proposal, approval of the Central Government and of the company in general meeting are required. Accordingly the following resolutions are submitted for Board's consideration:

Draft Resolution:

"RESOLVED THAT subject to the approval of the Central Government under Section 197 of the Companies Act, 2013 and subject to the approval of the company in general meeting, payment of commission not exceeding one

per cent of the net profits of the Company computed in the manner laid down in Section 198 of the Act for a period of five years commencing from the financial year ended 31st March, 2014 and at the rate of 3 per cent of the net profits computed in the said manner for any one or more years where the company shall not have a Managing and/ or Whole-time Director or a Manager during any such year out of the said financial years be paid to the Non-Executive Directors to be shared equally amongst such Directors.

RESOLVED FURTHER THAT necessary notices be published in newspapers in terms of Section 201 of the Act and the Secretary be and is hereby authorised to make the necessary application to the Central Government.”

(2) Amendment of Articles

Notes : The Board may recommend the following resolution as special resolution for the approval of general meeting at the forthcoming Annual General Meeting:

“RESOLVED THAT the Articles of Association of the Company be altered by the incorporation therein of the following new Article..... after existing Article..... the Directors of the company (other than a managing Director and a Whole-time Director) may be paid remuneration, in addition to fees for the meetings of the Board or any Committee attended by them on the lines prescribed in the second proviso of Section 197(1), by way of commission if the company, by a special resolution or in any other manner as may be applicable from time to time, authorises such payment provided that such commission shall not in the aggregate exceed three per cent of the net profits of the company and where the company has a Managing Director and/or Whole-time Director or a Manager in any year, such commission shall not exceed one per cent of the net profits of the Company, said net profits having been computed in the manner laid down in section 198 of the Act and further that such remuneration shall be paid to all the Directors for the time being in office (other than a Managing director or Whole-time Director) or to any one or more of them in such proportion as the Board may by resolution decide, or equally to all such Directors.

RESOLVED FURTHER THAT the Secretary be and is hereby authorised to take necessary action to obtain the approval of the general meeting at the forthcoming Annual General Meeting.”

Agenda Item No. 13

Accounts of the Company for the year ended 31st March, 2014

Notes : Draft of the Balance Sheet as at 31st March, 2014 and the Profit and Loss Account for the year ended as on the said date as circulated to the Directors may be considered for approval. The Board may pass the following resolution after deciding the appropriations to be made from the profits:

Draft Resolution:

“RESOLVED THAT the Profit and Loss Account of the Company for the year ended 31st March, 2012 and the Balance Sheet as on that date be and are hereby approved and the following amounts towards tax and in respect of appropriations against the profits be made as under :

- Profit for the year
- Profit brought forward
- Provision for Taxation
- Transfer to Debenture Redemption Reserve
- Transfer to General Reserve as per Transfer of Profits to Reserve Rules
- Interim dividend paid on Proposed final dividend
- Profit carried forward

RESOLVED FURTHER THAT the accounts be signed on behalf of the Board by Mr..... Chairman and

Mr. Managing Director and Mr Company Secretary and be then passed on to the Auditors for their report.”

Agenda Item No. 14

Recommendation of Final Dividend

Notes : The following resolution is for approval of the Board. The dividend recommended is in accordance with the provisions of Section 20 of the Companies Act, 2013 and the Companies

Draft Resolution:

“RESOLVED THAT Final Dividend at the rate of ` per equity share of ` 10 each aggregating ` be and is hereby recommended for the approval of the members at the forthcoming Annual General Meeting.

RESOLVED FURTHER THAT the dividend, if declared at the Annual General Meeting, be paid, to those shareholders whose names appear in the books of the company on (date of the Annual General Meeting).”

Agenda Item No. 15

Take note of the Directors Retiring and Eligible for Reappointment

Notes : It is submitted to the Board that out of the Directors subject to the retirement by rotation, Mr..... and Mr. Directors are due to retire at the forthcoming Annual General Meeting and being eligible, offer themselves for reappointment.

Agenda Item No. 16

Taking note of the Certificate from the retiring Auditors

Notes : It is submitted to the Board that the retiring Auditors, have furnished a certificate to the Company in terms of Section 139(9) of the Act to the effect that if they are reappointed, they will be Auditors of the number of companies as specified in Section 141(3)(g). This may be noted by the Board.

Agenda Item No. 17

Consideration of Draft Directors’ Report

Notes : The draft Directors’ Report circulated to the Directors along with particulars of conservation of energy, technology absorption and foreign exchange earning and outgo in the prescribed format and the particulars of employees as specified and Compliance Certificate by the Secretary in whole-time practice placed as Annexures to the draft Report, may be considered and approved by the Board. The Board may request the Chairman to sign the Directors Report on behalf of the Board.

Agenda Item No. 18

Closure of the Books and Notice to Stock Exchange

Notes : It is proposed to close the Register of Members and transfer books for the purpose of the forthcoming Annual General Meeting and payment of dividend from to (both days inclusive) and to pay the dividend, if declared, to those members who are registered with the company on the day of the said meeting. Notice of the said closure shall be given to the concerned stock exchanges 7 days in advance and also published in a newspaper under Section 91 of the Act. This may be approved by the Board. (It may be noted that where the shares in a company are not listed in a stock exchange, it is not obligatory for the company to close its Register of Members before AGM).

Agenda Item No. 19

Approval of date of next Annual General Meeting and of Notice

Notes : The Board may authorise calling and holding the forthcoming Annual General Meeting on (day) the 2014 (date) at A.M./P.M. at (place in the city or town). The Board may also approve of the draft notice as circulated to the Board containing the ordinary business considered at the Annual General Meeting and the special business along with explanatory statement and authorise the Secretary to forward the same to the members along with other documents and take all necessary actions in connection with the Annual General Meeting and matters relating thereto.

Agenda Item No. 20

Inviting Deposits from the Public

Notes : In terms of the Companies (Acceptance of Deposits) Rules, 2013, a company is allowed to invite or accept deposits from the public repayable not earlier than six months and not later than three years but subject to renewal. The main features of the Rules are as follows:

No company shall invite or accept or renew any deposits in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies

Issue of advertisement :

Every company under sub-section (2) of section 73 intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode or publish the circular in the form of an advertisement.

Such circular shall also be published at least once in English language in a leading English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

No circular or a circular in the form of advertisement shall be issued by or on behalf of a company unless, not less than thirty days before the date of such issue, there has been delivered to the Registrar for registration a copy thereof signed by a majority of the directors of the company as constituted at the time the Board approved the circular or circular in the form of advertisement, or their agents, duly authorized by them in writing.

Validity of advertisement:

An advertisement once issued shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the company in general meeting or, where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Act.

The Board may consider the matter and if it is proposed to invite deposits, the following resolution is submitted for approval :

Draft Resolution:

“RESOLVED THAT pursuant to the provisions of Section 73 and the Companies (Acceptance of Deposits) Rules, 2014 the Company may borrow by inviting deposits from the public on the basis of its audited accounts for the year ended 31st March, 2014 as under:

Up toLakh from the shareholders being 10% of company’s paid up share capital and free reserve and up to Lakh from public being 25% of company’s paid up share capital and free reserve at the interest rate not exceeding the maximum rate of interest prescribed by the Reserve Bank of India that the Non Banking Financial Companies can pay on their public deposits ___ per cent per annum in the manner set out for the various schemes

and that the draft advertisement and the terms and conditions placed before the meeting be and are hereby approved.

RESOLVED FURTHER THAT the Secretary be and is hereby authorised to file the circular/advertisement duly signed by the majority of Directors on the Board of the company with the Registrar of Companies and send to all members and publish the same in two newspapers as required.

RESOLVED FURTHER THAT any one of the following, namely, Mr. Mr..... or Mr. be and is hereby severally authorised to sign and issue the Deposit Receipts and take other actions as may be necessary in respect of the deposits accepted from time to time.”

Bank Account

The Board may also authorise opening of a separate account for receiving the deposits and pass the following resolution :

Draft Resolution:

“RESOLVED THAT a Current Account of the Company styled “XYZ Limited Public Deposit Account” be opened with (Name of the bank and address of the Branch) and the cheques and other instruments received under the Public Deposits Scheme 2014 of the company be credited to the said Account and any two of the following, namely, Mr..... Mr..... Mr..... and Mr..... be and are hereby jointly authorised to give instructions to the Bank relating to the said Account.”

Note:

- (1) The advertisement in two newspapers inviting deposits may be issued on or after the date of the Annual General Meeting if the Company is already accepting deposits or immediately in other cases.
- (2) On or before the date of publication of the advertisement (or where deposits are accepted without inviting) or on or before accepting deposits in the case, the text of the advertisement duly signed by majority of Directors (or the text of the Statement in lieu of advertisement) shall be filed with the Registrar of Companies.
- (3) Please note that a return shall be filed with the ROC showing the deposits as on 31st March duly certified by the Company’s Auditors by 30th June every year.
- (4) Please also take necessary action to deposit in a special Bank Account or in any other way the prescribed percentage of the deposits maturing by 31st March at the following year.

MINUTES OF BOARD MEETING (2 of 2017) MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF LIMITED HELD ON (DAY), (DATE, MONTH AND YEAR), AT (VENUE), FROM (COMMENCEMENT TIME) TO (CONCLUSION TIME)

PRESENT

- | | |
|------|-------------------|
| A.B. | Chairman |
| C.D. | |
| E.F. | Directors |
| G.H. | |
| I.J. | |
| K.L. | Managing Director |

INATTENDANCE

- | | |
|---------|-----------------|
| X. | Secretary |
| Y. | Finance Manager |

1. Minutes

The Minutes of the meeting of the Board of Directors of the company, held on, were noted by the Board and signed by the Chairman.

2. Register of Contracts

The Register of Contracts was signed by all the Directors present.

3. Leave of absence

Leave of absence from attending the meeting was granted to Mr. M.N. and Mr. O.P.

4. Notices of Disclosure of Interest

The following notices, received from the Directors of the Company, notifying their interest in other bodies corporate pursuant to the provisions of Section 184 of the Companies Act, 2013, were read and recorded :

Name of the Director and Date of Notice	Nature of Interest
Mr. C.D.	Appointed as a Member of the (date, month, year) Committee of Limited with effect from (date, month, year).
Mr. E.F.	Resigned as a Director of (date, month, year) Limited with effect from (date, month, year).

5. Share Transfer

The Share Transfer Register of the Company was placed before the meeting and the following Resolution was passed :

“RESOLVED THAT share transfers Nos. to inclusive consisting of Equity shares of the company, be approved and the names of the transferees be entered in the Register of Members.”

“RESOLVED FURTHER THAT Mr. X, Secretary, be and is hereby authorised to take further necessary action with regard to the transfer of shares approved by the Board.”

6. Managing Director’s Report

The Managing Director’s Report for the month of March 2014 was tabled, discussed and noted.

7. Sole Selling Agents

The appointment of Messrs S & T Bros. as the sole selling agents of the Company in the State of Maharashtra was considered and the following Resolution was passed :

“RESOLVED THAT, Messrs S & T Bros. of (address), be and are hereby appointed Sole Selling Agents for the sale of the Company’s products in the State of Maharashtra for a period of five years with effect fromon the terms and conditions contained in the draft agreement to be entered into between Messrs S & T Bros. and the Company, a copy of which was placed before the meeting and initialled by the Chairman for the purpose of identification, and that the agreement be signed by the Managing Director on behalf of the company.”

“RESOLVED FURTHER THAT the Managing Director be and is hereby authorised to take further necessary action to give effect to the resolution”.

8. Payment of Interim Dividend

The payment of interim dividend for the year ending..... was considered on the basis of the proforma accounts. The Directors opined that there were adequate profits to permit payment of interim dividend. Accordingly, the following Resolution was passed :

“RESOLVED THAT an interim dividend of Rupee one per equity share absorbing ` 10,00,000, be paid on the (date), out of the profits of the Company for the year ending, on 10,00,000 equity shares, subject to the deduction of income tax in accordance with the provisions of the Income Tax Act, 1961, to those equity shareholders whose names stand in the register of members on the of, and that the transfer books and the register of members be closed from the of..... to the of, both days inclusive, for the purpose of payment of such dividend.”

“RESOLVED FURTHER THAT a bank account be opened under the name and style “Interim Dividend Account ofCompany Limited” withBank and that the total amount of interim dividend be deposited in the said bank within 5 days from the date of this resolution and that Mr.Managing Director be and is hereby authorized to operate the said account.”

9. Approving advertisement for public deposit

The Board considered a note on the subject, setting out the terms and conditions under which the company will accept/renew deposits from the public and shareholders. The Board then passed the following Resolution :

“RESOLVED THAT, pursuant to Section 73 of the Companies Act, 2013, and the Companies (Acceptance of Deposits) Rules, 2014, the advertisement both in English and (vernacular language) inviting deposits from the public, from shareholders, employees, and others on the authority and in the name of the Board of Directors of the company, the draft whereof submitted to this meeting duly initialled by and for the purpose of identification, be and is hereby approved and adopted.”

“RESOLVED FURTHER THAT copies of the advertisement signed by the majority of the Directors on the Board or through their agents duly authorised in writing be delivered to the Registrar of Companies by the Company Secretary for registration as required under Rule 11, of the Companies (Acceptance of Deposits) Rules, 2014.”

“RESOLVED FURTHER THAT the Company Secretary be and is hereby authorised to issue, circulate and advertise the same in newspapers in accordance with the provisions of the Companies (Acceptance of Deposits) Rules, 2014.”

10. Delegation of power to Managing Director

The Chairman stated that it would be advantageous to deploy the surplus funds raised by the company, as and when suitable investment opportunities arise. The Board agreed and passed the following Resolution to authorize the Managing Director to make such investments:

“RESOLVED THAT Mr. K.L., Managing Director, be authorised to make investments in bonds and debentures of financial corporations in such a way that the surplus funds of the company may be beneficially utilized and the said investments may be disposed of as and when necessary and that such investment should not exceed the aggregate value of ` at any time provided that no investment should be made by the Managing Director in shares of companies in excess of the ceiling prescribed in sub-section (2) of Section 186 of the Companies Act, 2013.”

“RESOLVED FURTHER THAT the Managing Director be and is hereby authorised to sign the applications, receive any moneys in respect of the said investment, furnish receipts and to sign papers to dispose of the investments by sale as and when necessary.”

11. Constitution of a share transfer committee

The Chairman informed the Board that, with the increasing number of transfers, it was impractical to wait for Board Meetings to approve such transfers. He suggested that a Committee be constituted for this purpose. The Board agreed and passed the following Resolution :

“RESOLVED THAT a Committee of Directors named the Share Transfer Committee, consisting of Mr. C. D., Mr. G.H., and Mr. K.L. be and is hereby constituted to approve of registration of transfer of shares received by the company and further to :

- 1. approve and register transfer/transmission of shares.
- 2. sub-divide, consolidate and issue share certificates.
- 3. authorise affixation of the Common Seal of the company.
- 4. issue share certificates in place of those which are damaged, or in which the space for endorsement has been exhausted, provided the original certificates are surrendered to the company.”

“RESOLVED FURTHER THAT two Directors shall form the quorum for a meeting of the said Committee.”

12. Availing of Credit facilities from Bank

The Chairman informed the Board that the company had approached Bank for a loan facility of ` 25,00,00,000 (Rupees Twenty Five Crores). The Bank had sanctioned the facility vide its sanction letter dated The sanction letter was placed before the Board. After discussion, the Board passed the following Resolution :

“RESOLVED THAT approval be and is hereby accorded to avail of the Demand Loan facility of ` 25,00,00,000 (Rupees Twenty Five Crores) sanctioned by..... Bank, (address) as per the terms and conditions specified by the Bank vide its letter dated placed before the Board and initialled by the Chairman for the purpose of identification.”

“RESOLVED FURTHER THAT Mr. A.B., Managing Director of the company, be and is hereby authorised to execute the necessary documents in favour of Bank, to avail of the aforesaid Demand Loan facility.”

“RESOLVED FURTHER THAT the Common Seal of the company be affixed to the said documents in the presence of any two Directors of the company and the Company Secretary.”

“RESOLVED FURTHER THAT the Company Secretary be and is hereby authorised to file the necessary Form for registration of charge with the Registrar of Companies, and also forward a copy of this Resolution to..... Bank.”

13. Termination of the Meeting

There being no other business, the Meeting terminated with a vote of thanks to the Chair.

.....
Chairman

Entered on Date.....

Note :

WHILE PREPARING MINUTES OF THE MEETINGS, MENTION MUST BE MADE OF :

- (a) the names of the Directors present at the Meeting;
- (b) the names of the Directors who were absent and had sought leave of absence;

- (c) the fact that the Register of contracts was placed before the meeting and the Register was signed by all the Directors present thereat;
- (d) that Notices given by Directors disclosing their Directorships in other companies were read and noted;
- (e) the appointments of officers made at the Meeting;
- (f) the fact of giving of notice of the proposal and unanimity of decisions of disinterested Directors;
- (g) that interested Director(s) did not take part in the discussion of or vote on the items in which he/they was/were interested.

NOTICE OF ANNUAL GENERAL MEETING

XYZ LIMITED

Registered Office :

NOTICE is hereby given that the Second Annual General Meeting of the Members of XYZ Limited will be held on Tuesday, the 24th September 2014, at 3:30 p.m. at _____ (address) to transact the following business:

Ordinary Business :

1. To receive, consider and adopt the Audited Balance Sheet as at March 31, 2014, the Profit & Loss Account for the year ended on that date together with the Schedules and Notes attached thereto, alongwith the Reports of the Auditors and Directors thereon.
2. To declare a dividend.
3. To appoint a Director in place of Mr A, who retires by rotation and being eligible, offers himself for reappointment.
4. To appoint a Director in place of Mr B, who retires by rotation and being eligible, offers himself for reappointment.
5. To appoint a Director in place of Mr C, who retires by rotation and being eligible, offers himself for reappointment.
6. To appoint Auditors and to fix their remuneration.

Special Business:

Appointment of Director

7. To consider and, if thought fit, to pass, with or without modifications, the following Resolution as an Ordinary Resolution:

“RESOLVED THAT Mr D, who was appointed as an Additional Director by the Board of Directors of the Company pursuant to sub section (1) of Section 161 of the Companies Act, 2013 and Article ____ of the Articles of Association of the Company and who holds office only upto the date of this Annual General Meeting and in respect of whom the Company has received a Notice in writing, under Section 160 of the Companies Act, 2013, from a Member signifying his intention to propose Mr. D as a candidate for the office of a Director of the Company, together with the deposit of one lakh rupees be and is hereby appointed a Director of the Company liable to retire by rotation.”

Delisting of securities

8. To consider and, if thought fit, to pass the following Resolution as a Special Resolution:

“RESOLVED THAT, subject to the provisions of the Securities Contracts (Regulation) Act, 1956, and the Securities and Exchange of Board of India Act, 1992 and the rules framed thereunder and other applicable laws, rules and regulations and guidelines and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions as may be prescribed by The Securities and Exchange

Board of India and Stock Exchanges while granting such approvals, permissions and sanctions which may be agreed to by the Board of Directors of the Company, which expression shall be deemed to include any Committee of the Board for the time being exercising the powers conferred by the Board, the consent of the Company be and is hereby accorded to the Board to voluntarily de-list the equity shares of the Company from The Stock Exchange - Ahmedabad, The Calcutta Stock Exchange Association Limited and The Ludhiana Stock Exchange Association Limited.

“RESOLVED FURTHER THAT the Board be and is hereby authorised to do all acts, deeds and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above resolution.”

By order of the Board of Directors

PQR

Company Secretary

Place : New Delhi

Date : 26th August 2014.

Notes:

1. The explanatory statement pursuant to Section 102 of the Companies Act, 2013 relating to special business to be transacted at the Meeting is annexed.
2. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting. A proxy form is enclosed.
3. All documents referred to in the Notice and accompanying explanatory statement are open for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. upto the date of the Annual General Meeting and at the venue of the Meeting for the duration of the Meeting.
4. The Register of Members and Share Transfer Books will remain closed from Tuesday, 17th September 2014 to Tuesday, 24th September 2014 (both days inclusive).
5. The dividend on shares, if declared at the Meeting, will be paid within thirty days from the date of declaration to those Members or their mandatees whose names appear:
 - (a) as beneficial owners as on Tuesday, 24th September 2014, as per the lists to be furnished by NSDL/ CDSL, in respect of shares held in electronic form; and
 - (b) as Members in the Register of Members of the Company after giving effect to valid share transfers in physical form lodged with the Company on or before Tuesday, 24th September 2014.
6. Pursuant to Section 123 of the Companies Act, 2013, dividend for the financial year ended 31st March 2007, which remains unclaimed for a period of seven years, will be transferred to the Investor Education & Protection Fund of the Central Government. Members who have not encashed their dividend warrants in respect of the said dividend are requested to make their claim to the Share Department of the Company at the Registered Office of the Company or to the Registrars & Share Transfer Agents of the Company at (address). It may be noted that once the amounts in the unpaid dividend accounts are transferred to the Investor Education and Protection Fund of the Central Government, no claim shall lie against the Fund or the Company in respect thereof and the Members would lose their right to claim such dividend.

7. The Company has already transferred unclaimed dividend to the General Revenue Account of the Central Government. Members who have so far not claimed or collected their dividends for the said period may claim their dividend from the Registrar of Companies, NCT of Delhi, by submitting an application in the prescribed form.
8. Members are requested to notify the change in their address to the Company and always quote their Folio Numbers or DP ID and Client ID Numbers in all correspondence with the Company. In respect of holding in electronic form, Members are requested to notify any change of address to their respective Depository Participants.
9. Members holding shares in electronic form may please note that their bank details as furnished to the respective Depositories will be printed on their dividend warrants as per the applicable regulations. The Company will not entertain any direct request from such Members for deletion or change of such bank details. Instructions, if any, already given by Members in respect of shares held in physical form will not be automatically applicable to the dividend paid on shares in electronic form.
10. Any query relating to Accounts must be sent to the Company's Registered Office at least seven days before the date of the Meeting.
11. With a view to serving the Members better and for administrative convenience, an attempt has been made to consolidate multiple folios. Members who hold shares in identical names and in the same order of names in more than one folio are requested to write to the Company to consolidate their holdings in one folio.
12. Members who still hold shares certificates in physical form are advised to dematerialise their shareholding to avail the benefits of dematerialisation, which include easy liquidity (since trading is permitted in dematerialised form only), electronic transfer, savings in stamp duty and elimination of any possibility of loss of documents and bad deliveries.
13. Members can avail of the nomination facility under Section 72 of the Companies Act by filing relevant Forms, with the Company. Blank forms will be supplied on request.
14. As per the provisions of the Income Tax Act, 1961, tax is required to be deducted at source if the gross amount of dividend payable to a resident individual shareholder during the financial year exceeds ` 2,500. Resident individual shareholders who are likely to receive dividend amounting to more than ` 2,500 during the financial year and whose total estimated income from dividend as provided in Section 197A(1B) of the Income Tax Act, 1961, during such financial year is not likely to exceed ` 50,000 can claim gross dividend without deduction of tax at source by submitting a declaration in Form 15G (in duplicate) with the Company's Share Department at its Registered Office or with the Company's Registrars & Share Transfer Agents before 19th September 2014. Please note that it would not be possible for the Company to act upon 15G declarations received thereafter. As per the provisions of the Income Tax Act, 1961, every person from whose income any tax is to be deducted at source is mandatorily required to intimate Permanent Account Number (PAN) to the person responsible for deducting such tax at source. In case the Income Tax Department has not allotted PAN, the person is required to intimate General Index Register Number (GIR No.). Members whose dividend will be liable to deduction of tax at source are requested to intimate PAN/GIR No. to the Company's Share Department or the Company's Registrars & Share Transfer Agents before 19th September 2014.
15. In accordance with the provisions of Article _____ of the Articles of Association of the Company, Mr. A, Mr. B and Mr. C will retire by rotation at the Annual General Meeting and, being eligible, offer themselves for re-election. Further, Mr. D was appointed as an Additional Director and retires at the Annual General Meeting and the Company has received a notice for his reappointment at the Annual General Meeting. Additional information pursuant to Clause 49 of the Listing Agreement with Stock Exchanges, in respect of Directors seeking election, those retiring by rotation and seeking reappointment at the Annual General Meeting is given elsewhere in the Annual Report.

EXPLANATORY STATEMENT

As required by Section 102 of the Companies Act, 2013, the following explanatory statement sets out all material facts relating to the business mentioned under Item Nos. 7 and 8 of the accompanying Notice dated 26th August 2014.

Item No. 7

Appointment of Director

Mr. D was appointed by the Board of Directors of the Company on 15th April, 2014 as an additional Director and, as per the provisions of Section 161(1) of the Companies Act, 2013, he holds office as a Director up to the date of this Annual General Meeting. The Company has received a Notice from a Member alongwith a deposit of ` 100,000 signifying his intention to propose the appointment of Mr. D as a Director of the Company.

The Directors commend the passing of the resolution at Item No. 7

Mr. D may be deemed to be concerned or interested in the resolution relating to his appointment.

Item No. 8

Delisting of Securities

The equity shares of the Company are listed on the following stock exchanges: The Stock Exchange, Mumbai (BSE)

The National Stock Exchange of India Limited (NSE) The Delhi Stock Exchange Association (DSE)

The Stock Exchange - Ahmedabad (ASE)

The Ludhiana Stock Exchange Association Limited (LSE)

The Calcutta Stock Exchange Association Limited (CSE)

With the extensive connectivity of the BSE and NSE, investors have access to dealings in the equity shares of the Company all over the country. The bulk of the trading in the equity shares of the Company takes place on the BSE and NSE only. Trading, if any, on the other stock exchanges is negligible and the listing fees paid to these other stock exchanges are dis-proportionately high as compared to the trading volumes. As part of the cost reduction measures and to protect the investors' funds, it is proposed to voluntarily delist the equity shares of the Company from the Stock Exchanges at Ahmedabad, Ludhiana and Calcutta. However, the shares will continue to be listed at DSE, being the principal stock exchange. The proposed delisting of equity shares will not adversely affect the investors, as the Company's equity shares will continue to be listed on the BSE, NSE and the principal stock exchange DSE. The delisting will take effect after all approvals, permissions and sanctions are received.

Since the approval of Members is required for such voluntary delisting by way of a Special Resolution, the Directors commend the passing of the Special Resolution at Item No. 8.

None of the Directors of the Company is deemed to be concerned or interested in the above resolution.

By order of the Board of Directors PQR Company Secretary

Place : New Delhi

Date : 26th August 2014.

ATTENDANCE SLIP

XYZ LIMITED

Registered Office :

Members attending the Meeting in person or by Proxy or as Authorised Representatives are requested to complete this attendance slip and hand it over at the entrance of the Meeting hall.

I hereby record my presence at the SECOND ANNUAL GENERAL MEETING of XYZ LIMITED at
(address), at 3:30 p.m. on Tuesday, 24th September, 2014.

Full name of the Shareholder Signature
 Folio No.: / DP ID No.: & Client ID No.:
 Full name of Proxy/Authorised Signature of Proxy/Authorised
 Representative Representative
 (in capital letters)

Note : Shareholder/Proxy holder/Authorised Representative desiring to attend the Meeting should bring his copy of the Annual Report to the Meeting.

FORM OF PROXY
XYZ LIMITED

Registered Office :

I/We, being a Member(s) of XYZ LIMITED, hereby appoint the following as my/our Proxy to attend on my/our behalf at the Annual General Meeting/General Meeting of the Company, to be held on at a.m./p.m. and at any adjournment thereof:

1. Mr./Ms. (Name) (Signature), or failing him -
2. Mr./Ms. (Name) (Signature), or failing him -
3. Mr./Ms. (Name) (Signature), or failing him -

**I/We direct my/our Proxy to vote on the Resolutions in the manner as indicated below :

Resolutions	For	Against
Resolution No. 1. (To specify)		
Resolution No. 2. (To specify)		
Resolution No. 3. (To specify)		
Resolution No. 4. (To specify)		
Number of Shares held		
Affix		
Revenue		
Stamp		

Signed this day of 2014. Reference Folio No./DP ID & Client ID

Signature(s) of Members(s)
 (1)
 (2)
 (3)

Notes :

1. The Proxy, to be effective, must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.
2. A Proxy need not be a Member of the Company.
3. In the case of joint holders, the vote of the senior who tenders the vote, whether in person or by proxy, shall be accepted to the exclusion of the vote of the other joint holder(s). Seniority shall be determined by the order in which the names stand in the Register of Members.
4. This form of Proxy confers authority on the holder to demand or join in demanding a poll.
5. The submission by a Member of this Proxy form will not preclude such Member from attending in person and voting at the Meeting.
6. **This is optional. Please put a tick mark () in the appropriate column against the Resolution indicated in the box. If a Member leaves the "For" or "Against" column blank against any or all Resolutions, the Proxy will be entitled to vote in the manner he thinks appropriate. If a Member wishes to abstain from voting on a particular Resolution, he should write "abstain" across the boxes against that Resolution.
7. In case a Member wishes his votes to be used differently, he should indicate the number of shares under the columns "For" and "Against", as appropriate.

**NOTICE IN THE NEWSPAPER FOR CLOSURE OF REGISTER OF MEMBERS
AB LIMITED**

(Registered Office)

Notice is hereby given, under Section 91 of the Companies Act, 2013, that the Register of Members of the Company will remain closed from to September 2014 totheSeptember 2014 (both days inclusive) for the purpose of annual dividends on equity shares and on preference shares, to the year ended 31st March 2014. The dividends when declared will be paid to those shareholders whose names appear in the register of members on the September 2014.

Place :

Dated:

Company Secretary

NOTICE IN NEWSPAPERS OF ANNUAL GENERAL MEETING

XYZ LIMITED

Registered Office :

NOTICE is hereby given that the Second Annual General Meeting of the Company will be held on Tuesday, 24th September 2014 at 3:30 p.m. at (address) to transact the business as set out in the Notice dated 26th August 2014 a copy of which, along with the relative explanatory statement, has been posted to the Members of the Company at their address registered with the Company, together with the Annual Report and accounts for the year ended 31st March 2014.

The Register of Members and the Share Transfer Books will remain closed from the 17th September 2014 to 24th September 2014 (both days inclusive) for the purpose of the Annual General Meeting and payment of dividend, if declared at the Meeting.

Dividend, if declared, will be payable to those Members whose names appear on the Register of Members of the Company on 24th September 2014. In respect of shares held in electronic form, dividend will be payable on the basis of beneficial ownership as per details furnished on 24th September 2014 by NSDL/CDSL.

A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

By order of the Board of Directors

PQR

Company Secretary

Place : New Delhi.

Date : 28th August 2014.

Note: Members may please intimate immediately any change in their address.

NOTICE OF POSTPONED ANNUAL GENERAL MEETING

XYZ LIMITED

Registered Office :

Members are hereby informed that, due to unforeseen and unavoidable circumstances, the th Annual General Meeting of the Company, which was to have been held on Tuesday, 24th September 2014, will now be held on 2014, at p.m. at the Registered Office of the Company, to consider the business mentioned in the Notice dated 26th August 2014 which had been sent to Members in connection with the Meeting originally scheduled to have been held on 24th September 2014.

A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

By order of the Board of Directors

PQR

Company Secretary

Place : New Delhi.

Date : 3rd September 2014.

Note: Members may please immediately intimate any change in their address.

SPECIMEN AGENDA FOR GUIDANCE OF THE CHAIRMAN AT

ANNUAL GENERAL MEETING

PQR LIMITED

.....

AGENDA FOR THE 40TH ANNUAL GENERAL MEETING OF PQR LIMITED TO BE HELD AT ITS REGISTERED OFFICE AT ON 2014..... AT 11.30 A.M.

1. CHAIRMAN

Pursuant to Article of the Articles of Association of the Company, Mr..... Chairman will take the Chair.

2. QUORUM

Five members of the company personally present will form a quorum. After satisfying that the quorum is present, the Chairman will declare the meeting duly constituted and proceed to commence the proceedings.

3. WELCOME

The Chairman will welcome the members for the Annual General Meeting.

4. REGISTER OF DIRECTORS' SHAREHOLDINGS

The Chairman will inform the members that the Register of Directors' shareholdings maintained under Section 170 of the Companies Act, 2013, is kept open at the meeting and would remain open till the conclusion of the meeting.

5. NOTICE CONVENING THE MEETING & AUDITOR'S REPORT

The Chairman, with the consent of the members present, may take their approval to treat the notice convening the Annual General Meeting together with the Explanatory Statement, the Audited Accounts for the year ended 31st March, 2014, and the Directors' Report having already been circulated to the Members as read. The Chairman will ask the Company Secretary to read the Auditors' Report to the members.

6. REPORTS & ACCOUNTS

The Chairman may himself like to move, for consideration of the Meeting, the following motion or the motion may be moved by Mr.....a member personally present.

"That the audited Balance Sheet of the Company as on 31st March, 2014, and the Profit & Loss Account for the year ended on that date with the Reports of the Directors and the Auditors thereon, be received, approved and adopted."

This will be seconded by Mr.....another member present in person.

The Chairman will invite the members to speak on the motion and he will answer the questions raised by them. No proxy will have a right to participate in the discussion.

After adequate discussion the Chairman will put the above motion to vote and after taking count of the votes "for" and "against" by members personally present, he will declare the result on a show of hands.

7. DECLARATION OF DIVIDEND

Mr.....a member personally present will propose the following motion:

"That pursuant to the recommendation of the Board of directors of the Company, the dividend in respect of the year ended 31st March, 2014, on the equity shares of the Company at the rate of ` 5.00 (Rupees Five only) per share (50%), be paid to those shareholders of the Company whose names appear on the Company's Register of Members on.....2014.....or their mandatees."

This will be seconded by Mr.....a member personally present. The Chairman will put this for discussion and thereafter to vote and, after taking count of the votes "for" and "against" separately of members personally present, declare the result on a show of hands.

8. REAPPOINTMENT OF MR.....

Mr..... a member personally present will propose the following motion:

"That Mr..... who retires by rotation and who is eligible for reappointment, be and is hereby appointed a Director of the Company liable to retire by rotation."

This is seconded by Mr.....another member personally present.

The Chairman will put the motion for discussion and thereafter to vote and, after taking count of the votes "for" and "against" separately of members personally present, will declare the result on a show of hands.

9. REAPPOINTMENT OF MR.....

Mr..... a member personally present will propose the following motion:

“That Mr who retires by rotation and who is eligible for reappointment, be and is hereby appointed a Director of the Company liable to retire by rotation.”

This will be seconded by Mr. another member personally present.

The Chairman will put the motion for discussion and thereafter to vote and, after taking count of the votes “for” and “against” separately of members personally present, will declare the result on a show of hands.

10. APPOINTMENT OF A DIRECTOR

The company received a notice under Section 160 from Mr..... a member, signifying his intention to propose Mr..... for election as director and the company had advertised the notice in two newspapers. The Chairman may inform the meeting about this and call the proposer to move the motion as given in the notice which has to be seconded. (If the proposer is not present at the meeting, the motion will fall through).

11. APPOINTMENT OF AUDITORS

Mr..... a member personally present will propose the following motion.

“The M/s..... Chartered Accountants, be and are hereby appointed Auditors of the company to hold office from the conclusion of this meeting unit the conclusion of the next Annual General Meeting of the company at a remuneration that may be determined by the Board of directors in consultation with the Auditor”. This will be seconded by Mr.....another member present in person.

The Chairman will put the motion for discussion and thereafter to vote and, after taking count of the votes “for” and “against” separately of members personally present, will declare the result on a show of hands.

12. SPECIAL BUSINESS

Special Resolutions

(i) Under Section 180(1)(a)

Mr.....a member personally present proposes:

“That pursuant to Section 180(1)(a) of the Companies Act, 2013, the consent of the Company in general meeting be and is hereby accorded to Board of directors, (“the Board”) to mortgage and/or charge the immovable and movable properties of the Company, wheresoever situated, both present and future, as may be specified in each individual case, and the whole of the undertaking of the Company with power to enter upon and take possession of the assets of the Company in certain events to or in favour of all or any of the following, viz.:

- 1.
- 2.
- 3.
- 4.

A. *To Secure:*

- the financial assistance from one or more of the said Institutions not exceeding ‘..... in the from of subscription to non-convertible debentures issued and/or to be issued by way of private placement;
- the financial assistance from:
 - (i)

(ii)

(iii) Any of the above mentioned Public Financial Institutions and/or banks in respect of the Rupees and foreign currency loans aggregating to about ` lakh that may be granted to the Company to finance the cost of the Company's ongoing modernisation plans, together with interest at the respective agreed rate, additional interest, liquidated damages, commitment charge, premium on prepayment or on redemption, cost/charges, expenses and all other monies payable by Company to..... and as Agent and Trustees in terms of their respective Loan Agreements/Heads of Agreement/ Hypothecation Agreements/Trustee Agreements/Letters of Sanction/Memorandum of Terms and Conditions, entered into/to be entered into by the Company, in respect of the said term loans/debentures: and

B. To agree with all or any of the aforesaid Institutions and.....as Agent and Trustees in terms of their respective Loan Agreements/Heads of Agreement/Hypothecation Agreements/Trustees Agreements/ Letters of Sanction/Memorandum of Terms and Conditions to reserve a right to take over the management of the business and concern of the Company in certain events, and the Board of directors of the Company be and is hereby authorised to finalise with the aforesaid Institutions and..... as Agent and Trustee the documents for creating aforesaid mortgage and/or charge and for reserving the aforesaid right and to do all such acts and things as may be necessary for giving effect to this resolution.”

This will be seconded by Mr.....another member personally present.

The Chairman will put the motion for discussion and thereafter to vote and, after taking count of the votes “for” and “against” separately on a show of hands by members personally present, the Chairman will declare the result.

(ii) Under Section 180(1)(c)

Mr..... a member personally present will propose:

“That pursuant to the provisions of Section 180(1)(c) of the Companies Act, 2013, and in supersession of the Special Resolution passed by the members in General Meeting held on..... the company hereby accords its consent to the Board of directors borrowing from time to time all such sums of monies as it may deem requisite or proper for the purpose of the business of the Company notwithstanding that monies to be borrowed together with the monies already borrowed by the Company (apart from Cash Credit and temporary loans obtained from the Company's bankers in the ordinary course of business) exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, reserves not set apart for any specific purpose provided that the total amount upto which monies may be borrowed by the Boards of directors (apart from Cash Credit and temporary loan obtained from the company's bankers in the ordinary course of business) shall not exceed the sum of ` 60,00,00,000 (Rupees Sixty crore only)”.

This will be seconded by Mr..... another member present in person.

The Chairman will put the motion for discussion and thereafter to vote and after taking count of the votes “for” and “against” separately on a show of hands by members personally present, the Chairman will declare the result.

Note: A proxy cannot speak at the meeting unless the Articles of the Company otherwise provide. A proxy can exercise his voting only where there is a poll. Therefore, in a meeting members personally present and personsholding proxies have to be seated separately so that the Chairman can ensure that proxies do not take part in the proceeding nor vote on a show of hands.

There will be a two way counting of votes on a voting by a show of hands, that is, the votes cast in favour will be counted first and then the votes cast against will be counted.

SPECIMEN MINUTES OF ANNUAL GENERAL MEETING OF MEMBERS

PQR Limited

**MINUTES OF THE PROCEEDINGS OF THE SECOND ANNUAL GENERAL MEETING OF XYZ LIMITED HELD
ON TUESDAY, 24TH SEPTEMBER 2014 AT _____ (ADDRESS), FROM 3:30 p.m. to 6:00 p.m.**

The following were present:

1. Mr. W (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. D (Director and Member)
5. Mr. E. (Director, Chairman of Audit Committee)
6. Mr. F (Company Secretary)
7. _____ (Members present in person) [state number]
8. _____ (Members present by Proxy) [state number]

Mr. G, Partner of M/s _____, Chartered Accountants, Auditors of the Company, was present. Mr. H, Practising Company Secretary, was also present.

CHAIRMAN

In accordance with Article _____ of the Articles of Association, Mr. W, Chairman of the Board of Directors, took the Chair.

OR

{Mr. B was elected Chairman of the Meeting, in terms of Article ____ of the Articles of Association of the Company}.
The Chairman welcomed the Members and introduced the Directors seated on the dais.

The Chairman declared that the requisite Quorum was present and called the Meeting to order. The Register of Directors' shareholdings was placed at the Meeting and was available for inspection.

With the consent of the Members present, the Notice convening the Annual General Meeting of the Company was taken as read. The Chairman requested the Company Secretary to read the Auditors' Report.

After the Auditor's Report had been read, the Chairman delivered his speech.

The business of the Meeting as per the Notice thereof was thereafter taken up item wise.

1. Adoption of Accounts

The Chairman requested Mr. _____ to read the Ordinary Resolution for the adoption of the Accounts for the year ended 31st March 2014 and Mr. _____ read out the Ordinary Resolution as follows:

“RESOLVED THAT the audited Balance Sheet of the Company as at 31st March 2014 and the Profit and Loss Account of the Company for the financial year ended on that date, together with the Schedules and Notes attached thereto, along with the Reports thereon of the Directors and the Auditors, as circulated to the Members and laid before the Meeting, be and are hereby approved and adopted.”

After the above Resolution was proposed and seconded, but before it was put to the vote, the Chairman invited Members (other than those present by Proxy) to make observations and comments, if any, on the Report and Accounts, as well as on the other Resolutions set out in the Notice convening the Meeting.

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Some Members made their observations and comments and raised queries on the Annual Report and Accounts and other items set out in the Notice and the Chairman answered their queries.

Before putting the Resolution to vote, the Chairman reminded the Meeting that Proxies were not eligible to vote on a show of hands. Thereafter, the Chairman put the Resolution for the adoption of the Accounts and the Reports thereon to the vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried by the requisite majority.

2. Declaration of Dividend

Mr. _____ read the following Resolution as an Ordinary Resolution:

“RESOLVED THAT the dividend @ ` 2 on the equity shares of ` 10 each, fully paid-up, be and is hereby declared for payment, after deduction of tax at source, if any, to those Members whose names appear on the Company's Register of Members on Tuesday, 24th September 2014”.

The Resolution was proposed by Mr. _____ and seconded by Mr. _____, and was put to the vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

3. Appointment of Director

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT, pursuant to Section 152(6)(a) of the Companies Act, 2014, Mr. A, who retires by rotation and, being eligible for re-appointment, offers himself for re-appointment, be and is hereby re-appointed as a Director of the Company and that his period of office be liable to determination by retirement of Directors by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

4. Appointment of Director

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT, pursuant to Section Section 152(6)(a) of the Companies Act, 2013, Mr. B, who retires by rotation and, being eligible for re-appointment, offers himself for re-appointment, be and is hereby re-appointed as a Director of the Company and that his period of office be liable to determination by retirement of Directors by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

6. Appointment of Auditors

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT M/s. _____, Chartered Accountants, _____, be and are hereby re-appointed as Auditors of the Company to hold office from the conclusion of this Meeting until the conclusion of the next Annual General Meeting of the Company on a remuneration of ` _____, plus applicable service tax and other out of pocket expenses incurred for the purposes of the audit”.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

7. Appointment of Director

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED THAT Mr. D who was appointed as an Additional Director by the Board under Section 161(1) of the Companies Act, 2013 and Article ____ of the Articles of Association of the Company and who holds office only upto the date of this Annual General Meeting and in respect of whom the Company has received a Notice in writing, under Section 160 of the Companies Act, 2013, from a Member signifying his intention to propose Mr. D as a candidate for the office of a Director of the Company, together with the prescribed deposit be and is hereby appointed a Director of the Company liable to retire by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

8. Delisting of Securities – Special Resolution

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as a Special Resolution:

“RESOLVED THAT, subject to the provisions of the Securities Contracts (Regulation) Act, 1956, and the Securities and Exchange of Board of India, Act, 1992, and the rules framed thereunder and other applicable laws, rules and regulations and guidelines and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions as may be prescribed by The Securities and Exchange Board of India and Stock Exchanges while granting such approvals, permissions and sanctions, which may be agreed to by the Board of Directors of the Company, which expression shall be deemed to include any Committee of the Board for the time being, exercising the powers conferred by the Board, the consent of the Company be and is hereby accorded to the Board to voluntarily de-list the equity shares of the Company from The Stock Exchange - Ahmedabad, The Calcutta Stock Exchange Association The Limited and Ludhiana Stock Exchange Association Limited.

“RESOLVED FURTHER THAT the Board be and is hereby authorised to do all acts, deeds and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above Resolution.”

On a show of hands, the Chairman declared the aforesaid Special Resolution carried with the requisite majority.

TERMINATION OF THE MEETING

The Meeting terminated with a vote of thanks to the Chair.

CHAIRMAN

Date : _____

DEMAND FOR POLL

To

The Chairman of the Second Annual General Meeting of XYZ Limited being held on Tuesday, 24th September 2014 at 3:30 p.m. at _____(address).

We the undersigned, being the holders of an aggregate of _____ equity shares of ` 10 each of the Company, as per the details set out below against our respective names, demand that, pursuant to the provisions of Section 109 of the Companies Act, 2013, a poll be taken in respect of the Resolution proposed at Item No. 3 of the Notice dated 26th August 2014 of the second Annual General Meeting of the Company on which the voting is yet to be taken on a show of hands.

OR

{on which voting on a show of hands has been taken but the result thereof is yet to be announced} OR

{which was declared carried on voting by show of hands.}

Sl. No.	Name of Member	Folio No./ Client ID No	No. of shares Held

**ANNOUNCEMENTS BY THE CHAIRMAN OF THE MEETING
IN CONNECTION WITH A POLL**

1. Immediately after a Poll is demanded:

“I request you to make your demand on the Poll Demand Sheet so that the same can be verified to ascertain the validity of the demand in terms of the Companies Act, 2013, and the Articles of Association of the Company.”

After verification of the demand and if the demand is found to be validly made:

“I now order that the Poll on the Resolution in respect of Item No. _____ of the Notice, on the subject of _____ be taken and I appoint Mr _____ and Mr _____ as the Scrutineers.

The Poll will commence half an hour after the conclusion of all the items on the Agenda for the Meeting.

The Poll will be held in a part of this hall and will continue for half an hour or till all the Members or their valid Proxies or Authorised Representatives present and willing to cast their votes, have cast their votes, whichever is earlier.

I authorise the Scrutineers to issue the Poll papers to Members/Proxies/ Authorised Representatives and to advise them about the procedure to be followed; and to declare the Poll as closed on conclusion thereof, after ensuring that all the Members/Proxies/Authorised Representatives present have been provided the opportunity to vote. In terms of the provisions of the Articles of Association of the Company, a Member who is in arrears of moneys payable on the shares allotted to him is not entitled to vote. The Scrutineers can take the assistance as may be required of the officers or employees of the Company in the conduct of the poll. I request you all to extend your co-operation in the conduct of the poll.

The details of the result of the poll would be displayed on the notice board at the Registered Office of the Company not later than 11:00 a.m. on September _____. It would also be put up on the website of the Company at the id _____”

XYZ LIMITED

Registered Office : _____

POLL PAPER

Poll paper for poll on the Resolution placed before the Meeting of the Equity Shareholders of XYZ Limited on Tuesday, 24th September 2014, at _____ (address)

*1. To be filled if the person present is a Member:

- (a) Name of the Member/s (as appearing in the Register of Members)
- (b) Registered Folio Number/Client ID

*2. To be filled if the person present is a Proxy:

- (a) Name of the Proxy Holder
- (b) Name of the Member/s (as appearing in the Register of Members) whom the proxy represents
- (c) Registered Folio Number/Client ID

*3. To be filled if the person present is an Authorised Representative under Section 113 of the Companies Act, 2013:

- (a) Name of the Body Corporate
- (b) Name of the Authorised Representative
- (c) Date of Board Resolution/other authorisation
- (d) Registered Folio Number/Client ID

4. Number of Equity Shares Held.

* Complete item 1 or 2 or 3 as applicable in your case.

VOTING

Votes Cast

For	Against
No. of Votes	No. of Votes
(i.e. Shares)	(i.e. Shares)

Resolution for approving (give details)

Signature of Member/Proxy Holder/Authorised Representative

Notes :

1. Kindly fill in all relevant particulars carefully. A poll paper incomplete in any respect would be liable to be treated as invalid.
2. If you vote for the Resolution, specify the number of votes (i.e. shares) under the column "For".
3. If you vote against the Resolution, specify the number of votes (i.e. shares) under the column "Against".
4. A person voting as a Member/Proxy Holder/Authorised Representative should use separate Poll papers to vote as Member/Proxy Holder/ Authorised Representative.

5. You can split your votes and use them differentially.
6. In the case of joint shareholders:
 - (i) the Member present can vote. The Member casting the vote should indicate the name of the first holder as also his name in item 1(a) of the Poll Paper.
 - (ii) where more than one of the joint shareholders are present, the Member whose name stands first or higher (amongst the joint-holders) is alone entitled to vote. The Member casting the vote should indicate the name of the first holder as also his name in item 1(a) of the Poll Paper.
7. In case the Member votes in person, the signature on the Poll Paper should be as per the specimen signature lodged with the Company or with the Depository Participant.
8. No writings other than what is called for in the Poll Paper should be made thereon.
9. After it is completed and signed, the Poll Paper must be deposited only in the ballot box provided therefor.

XYZ LIMITED

Registered Office : _____

POLLING RECORD

Date of Meeting _____

Item No. of the Notice dated _____ of the Meeting on which the poll was held : _____

Subject matter on which the poll was held: _____

Sr. No.	Name(s) of Member(s)	Folio No. or Client ID No. <i>For</i>	No. of shares held <i>Against</i>	No. of shares held

Date: _____ Initials of Scrutineers: _____ *{each page should be initialled by the Scrutineers and they should sign the last page in full}*

REPORT OF THE SCRUTINEERS TO THE CHAIRMAN

From : Mr. & Mr.

To :

The Chairman of the th Meeting of XYZ Limited, held on

Dear Sir,

In terms of your directions, we the Scrutineers appointed for the conduct of the Poll, had conducted the Poll on the Resolution at Item No. of the Notice dated on the subject and we report that:

1. The Poll commenced at _____ a.m.
2. The Ballot Boxes were verified by us to be empty and were locked and sealed under our supervision
3. The Poll voting papers, duly initialled by one of us, were issued to the Members/Proxies/Authorised Representatives who were present and were willing to vote.

4. After all of them had exercised their votes, the polling was declared concluded at ___a.m.
5. The sealed ballot boxes were opened in our presence thereafter and the poll voting papers were scrutinized by us with the assistance of the staff of the Secretarial Department of the Company.

6. We give hereunder the voting details:

Total number of votes cast : _____(consisting of _____ voting papers) {state number}

Less : Invalid votes : _____(consisting of _____ voting papers) {state number}

Total valid votes : _____(consisting of _____ voting papers) {state number}

Votes FOR the Resolution : _____

Votes AGAINST the Resolution : _____

7. All the _____ {state number} poll voting papers are submitted herewith in an envelope duly sealed in our presence and initialled by us.

Thanking you,

Yours faithfully,

1.

2.

..... (Signature and name of Scrutineer)

(Signature

and name of Scrutineer)

Date :

Time :

**ANNOUNCEMENT ON THE NOTICE BOARD OF THE
COMPANY OF THE RESULT OF THE POLL**

XYZ LIMITED

Registered Office : _____

RESULT OF THE POLL HELD AT THE _____ MEETING OF THE COMPANY HELD ON SEPTEMBER _____

Item No. _____ of the Notice dated _____ Subject: _____

Total number of votes cast : _____

Invalid votes : _____

Total number of valid votes : _____

Number of votes cast FOR the Resolution : _____

Number of votes cast AGAINST the Resolution : _____

Result : _____

CHAIRMAN

Place : _____

Date : _____

Time : _____

**BOARD RESOLUTION AUTHORIZING THE PROCESS FOR OBTAINING APPROVAL OF
SHAREHOLDERS THROUGH VOTING BY POSTAL BALLOT**

“RESOLVED THAT, pursuant to Section 110 and other applicable provisions, if any, of the Companies Act, 2013, and the Rules issued thereunder, approval of the Board be and is hereby accorded to conduct a Postal Ballot to seek the approval of the Members of the Company by a Special/Ordinary Resolution for (here set out the purpose of the Resolution) and that the draft of the Notice together with the Explanatory Statement annexed thereto, placed before the Board and initialled by the Chairman for identification, be and is hereby approved and that the said Notice along with the Explanatory Statement thereto be issued to the Members by the Company Secretary.

RESOLVED FURTHER THAT the following calendar of events for implementing the proposal be and is hereby approved :

[Here give the calendar of events with specific dates]

RESOLVED FURTHER THAT Mr. _____ (here set out the name of the Scrutinizer and his occupation), who has given his consent to act as a Scrutinizer if so appointed, be and is hereby appointed as Scrutinizer for a period not exceeding sixty days from the date of appointment to conduct the Postal Ballot of the Company at a remuneration of (here set out the remuneration or in case the power to fix remuneration is delegated, insert “at such remuneration and out of pocket expenses as may be determined by Mr. _____, Managing Director and Mr. _____, Director of the Company”) excluding incidental expenses which would be reimbursed by the company.

RESOLVED FURTHER THAT Mr. _____, Director, and Mr. _____, Company Secretary, be made responsible for the entire Postal Ballot process and that they are hereby jointly and severally authorised to do all things and to take all incidental and necessary steps including sending of the Notice to all the Members and filing of this Resolution with the Registrar of Companies, to conduct the said Postal Ballot process for and on behalf of the Company and to settle all questions or difficulties that may arise in the course of implementing this Resolution.

RESOLVED FURTHER THAT Notice be given to every Member of the company and the voting rights of such Members be reckoned as on the cut-off date which shall be _____(date).

AND RESOLVED FURTHER THAT the last date for despatch of Notice shall be _____(date), the last date for receipt of postal ballot forms shall be _____(date) and the date of declaration of result of Postal Ballot shall be _____(date).”

NOTICE XYZ

Limited

Registered Office : _____

Dear Shareholder(s),

Notice pursuant to Section 180(1)(a) of the Companies Act, 2013

Pursuant to the provisions of Section 180(1)(a) of the Companies Act, 2013, sale, lease or otherwise disposal of the whole or substantially the whole of any undertaking of the Company requires the approval of Members by way of an Ordinary Resolution.

The Company proposes to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the Company at _____ engaged in the business of manufacture of _____.

As per Section 110 of the Companies Act, 2013, read with Rule 22 (16) of the Companies (Management and Administration) Rules, 2014, consent of the Members under Section 180(1)(a) of the Companies Act, 2013, is required to be obtained by means of voting by Postal Ballot. The proposed Ordinary Resolution and Explanatory Statement stating all material facts and the reasons for the proposal is appended below and a postal ballot form is

enclosed for your consideration. The Company has appointed Mr. _____, as Scrutinizer for conducting the Postal Ballot process in a fair and transparent manner.

Please read carefully the instructions printed in the postal ballot form and return the form duly completed in all respects in the enclosed self-addressed pre-paid postage envelope so as to reach the Scrutinizer on or before the close of working hours on _____ (Day) _____ (Date).

The Scrutinizer will submit his report to the Chairman after completion of the scrutiny and the result of the voting by Postal Ballot will be announced on _____ (Day) _____ (Date) at _____ a.m./p.m. at _____ (address).

ORDINARY RESOLUTION

To consider and, if thought fit, to pass, with or without modification(s), the following Resolution as an Ordinary Resolution :

“RESOLVED THAT the consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013, to the Board of Directors of the Company (the Board) to sell, lease or otherwise dispose of at such consideration and with effect from such date as the Board may think fit, the whole or substantially the whole of the undertaking of the Company at _____ engaged in the business of manufacture of _____ .

RESOLVED FURTHER THAT the Board be and is hereby authorized to do or cause to be done all such acts, deeds and other things as may be required or considered necessary or incidental thereto for giving effect to the aforesaid Resolution”.

By order of the Board of Directors
Company Secretary

Place : _____

Date : _____

ANNEXURE TO NOTICE

Explanatory Statement pursuant to Section 102 of the Companies Act, 2013

The Company had during the year _____ undertaken a comprehensive review of its business in India. The Board of Directors, at its meeting held on _____, noted and took on record the report of the review and analysed the various options detailed therein.

The Board decided that it was no longer cost effective to manufacture and export from the _____ manufacturing plant (the plant). Maintaining production for the Indian market alone was not viable and it was decided to discontinue production at the plant.

The Board of Directors of the Company, at its meeting held on _____, has approved, subject to your approval, the sale, lease or otherwise disposal of the undertaking engaged in the business of manufacture of _____ located at _____

The Board commends the resolution for approval by the members.

None of the Directors is concerned or interested in the said Resolution except to the extent of shares held by them in the Company.

By order of the Board of Directors

Company Secretary

Place : _____

Date : _____

Notes:

- (1) Shareholders who wish to be present at the time of declaration of the result may do so.
- (2) Only a shareholder entitled to vote is entitled to exercise his vote through Postal Ballot and a shareholder having no voting rights should treat this Notice as an intimation only.

ADVERTISEMENT

XYZ Limited

NOTICE TO MEMBERS

Members are hereby informed that the Company has on _____ (Date) completed the despatch of a Notice under Section 110 of the Companies Act, 2013, along with the postal ballot form and a self addressed reply envelope (for which postage will be paid by the Company) in relation to an Ordinary Resolution under Section 180(1)(a) of the Companies Act, 2013, seeking members' consent to the sale, lease or disposal of the whole or substantially the whole of the undertaking, as set out therein.

The Board of Directors of the Company has appointed _____ (Name & occupation) as the Scrutinizer for conducting the Postal Ballot in a fair and transparent manner. Members are requested to note that the postal ballot form duly completed and signed should reach the Scrutinizer not later than the close of working hours on _____ (Day) _____ (Date). All postal ballot forms received after the said date will be treated as if reply from such Members has not been received.

A Member may request for a duplicate postal ballot form, if so required.

A person who has become a Member after _____ (Date) (date of commencement of despatch of Notice) but before _____ (Date) (the cut-off date) may obtain the postal ballot form from the company and vote on the Resolution by Postal Ballot.

The voting rights of Members shall be reckoned on _____ (date) which is the cut-off date.

XYZ Limited Company Secretary

Registered Office:

Date : _____

POSTAL BALLOT FORM

XYZ LIMITED

Registered Office _____

POSTAL BALLOT FORM

1. Name(s) of Shareholder(s) : _____

(in block letters) _____

(including joint holders, if any) _____

2. Registered address of the

Sole/First named Shareholder: _____

3. Folio No./DP ID No./Client ID No.* (*Applicable to investors holding shares in dematerialized form) :

4. Number of shares held : _____

5. I/We hereby exercise my/our vote in respect of the Ordinary/Special Resolution to be passed through Postal Ballot for the business stated in the Notice of the Company by conveying my/our assent or dissent to the said Resolution by placing the tick () mark in the appropriate box below.

Item No.	Description	No. of shares	
		I/We assent to the Resolution	I/We dissent the Resolution
(1)			
(2)			

Place : _____

Date : _____

(Signature of the Shareholder)

INSTRUCTIONS

1. A shareholder desiring to exercise his vote by Postal Ballot may complete this postal ballot form and send it to the Scrutinizer in the attached self-addressed envelope. Postage will be borne and paid by the Company. However, envelopes containing postal ballots, if deposited in person or sent by courier at the expense of the shareholder will also be accepted.
2. The self-addressed envelope bears the address of the Scrutinizer appointed by the Board of Directors of the Company.
3. This postal ballot form should be completed and signed by the shareholder. Unsigned postal ballot forms will be rejected.
4. Where the postal ballot form has been signed by an authorized representative of a body corporate, a certified copy of the relevant authorisation to vote on the Postal Ballot should accompany the postal ballot form. Where the form has been signed by a representative of the President of India or of the Governor of a State, a certified copy of the nomination should accompany the postal ballot form. A Member may sign the form through an Attorney appointed specifically for this purpose, in which case an attested true copy of the Power of Attorney should be attached to the postal ballot form.
5. A shareholder need not use all his votes nor he needs to cast all his votes in the same way.
6. Duly completed postal ballot forms should reach the Scrutinizer not later than the close of working hours on _____ (Day) _____ (Date). Any postal ballot form received after this date will be treated as if the reply from the shareholder has not been received.
7. A shareholder may request for a duplicate postal ballot form, if so required. However, the duly filled in duplicate postal ballot form should reach the Scrutinizer not later than the date specified at item 6 above.
8. Voting rights shall be reckoned on the paid up value of shares registered in the name of the shareholder on the cut-off date, which is the date of completion of despatch of the Notice. This date shall be announced through _____ advertisement.

9. Shareholders are requested not to send any other paper along with the postal ballot form in the enclosed self-addressed postage prepaid envelope in as much as all such envelopes will be sent to the Scrutinizer and any extraneous paper found in such envelope would be destroyed by the Scrutinizer.

**SCRUTINIZER'S REPORT The
Chairman of _____
(Full address of the Company)**

Dear Sir,

1. The Board of Directors of the company at its meeting held on _____ has appointed me as a Scrutinizer for conducting the postal ballot voting process.
2. I submit my report as under:
 - 2.1 The company has completed on _____ (date) the despatch of postal ballot forms alongwith postage prepaid business reply envelope to its Members whose name(s) appeared on the Register of Members/list of beneficiaries as on _____ (date).
 - 2.2 Particulars of all the postal ballot forms received from the Members have been entered in a register separately maintained for the purpose.
 - 2.3 The postal ballot forms were kept under my safe custody in sealed and tamper proof ballot boxes before commencing the scrutiny of such postal ballot forms.
 - 2.4 The ballot boxes were opened on _____ (date) in my presence.
 - 2.5 The postal ballot forms were duly opened in my presence and scrutinized and the shareholding was matched/ confirmed with the Register of Members of the company/list of beneficiaries as on _____ (date).
 - 2.6 All postal ballot forms received upto the close of working hours on _____ (date), the last date and time fixed by the company for receipt of the forms, were considered for my scrutiny.
 - 2.7 Envelopes containing postal ballot forms received after _____ (date) were not considered for my scrutiny. Such envelopes aggregate to _____ vide serial number ____ to _____. These envelopes were not opened and they are separately kept.
 - 2.8 Envelopes containing postal ballot forms returned undelivered aggregated to ____ (nos.) vide serial number _____ to _____. These envelopes were also not opened and they are separately kept.
 - 2.9 I did not find any defaced or mutilated ballot paper.

OR

..... (nos.) ballot papers were defaced/mutilated and are separately kept.

3. A summary of the postal ballot forms received is given below:

Particulars	No. of postal ballot forms	No. of Shares Equity	% of total paid up capital

(a) Total postal ballot forms received

- (b) Less : Invalid postal ballot forms (as per register)
 - (c) Net valid postal ballot forms (as per register)
 - (c) Postal ballot forms with assent for the Resolution
 - (d) Postal ballot forms with dissent for the Resolution
4. I have handed over the postal ballot forms and other related papers/ registers and records for safe custody to the Company Secretary/Director authorised by the Board to supervise the postal ballot process.
5. You may accordingly declare the result of the voting by Postal Ballot.

Thanking you,

Name & signature of Scrutinizer

Place :

Dated :

RESULT OF POSTAL BALLOT

Result of the voting conducted through Postal Ballot on the Ordinary Resolution under Section 180(1)(a) of the Companies Act, 2013, relating to sale, lease or otherwise disposal of the whole or substantially the whole of the undertaking of the company at _____ engaged in the business of manufacture of _____

Number of valid postal ballot forms received Votes in favour of the Resolution

Votes against the Resolution

Number of invalid postal ballot forms received

The Resolution has therefore been approved/not approved by the shareholders with the requisite majority.

Place : _____

Date : _____

_____ Chairman

MINUTES

XYZ LIMITED

Minutes of the proceedings held on _____ (date) at _____ (time) at _____ (address) of XYZ Limited, relating to declaration of the result on the voting by Postal Ballot conducted pursuant to Section 110 of the Companies Act, 2013 on the Ordinary Resolution under Section 180(1)(a) of the said Act as set out in the Notice dated _____ pursuant to Section 110 of the Act.

Present :

1. Mr. A Chairman of the Board of Directors
2. Mr. B Company Secretary of the Company and as a Member
3. Mr. C Scrutinizer for the Postal Ballot
4. Mr. D Member
5. Mr. E Member
6. Mr. F Member
7. Mr. G Member
8. Mr. H Member

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The Chairman stated that the Company had, on _____ despatched to all the shareholders, a Notice dated _____ under Section 110 of the Companies Act, 2013, for obtaining the consent of the shareholders to the following Ordinary Resolution by means of Postal Ballot :

“RESOLVED THAT the consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013, to the Board of Directors of the Company (the Board) to sell, lease or otherwise dispose of at such consideration and with effect from such date as the Board may think fit, the whole or substantially the whole of the undertaking of the Company at _____ engaged in the business of manufacture of _____.

RESOLVED FURTHER THAT the Board be and is hereby authorized to do or cause to be done all such acts, deeds and other things as may be required or considered necessary or incidental thereto for giving effect to the aforesaid Resolution”.

The Chairman stated that it was mentioned in the said Notice dated _____ that the postal ballot form sent therewith should be returned by the shareholders duly completed so as to reach the Scrutinizer on or before _____ and that the Scrutinizer will submit his report to the Chairman after completion of the scrutiny.

The Chairman thereafter stated that the Scrutinizer, Mr. _____, had carried out the scrutiny of all the postal ballot forms received upto the close of working hours on _____ and that Mr. _____ had submitted his Report dated _____ and that he as the Chairman had accepted the said Report.

The Chairman then announced the following result of the Postal Ballot as per the Scrutinizer’s Report : Number of valid postal ballot forms received

Votes in favour of the Resolution Votes against the Resolution

Number of invalid postal ballot forms received

The Chairman thereafter stated that the Ordinary Resolution set out in the Notice dated _____ was therefore duly approved/not approved by the requisite majority of the shareholders.

Place : _____

Date : _____ Chairman

TIME-FRAME FOR POSTAL BALLOT

Sl. No.	Particulars	Date
1.	Draft the following: (a) Notice u/s 2(65) (b) Draft Resolution (c) Explanatory Statement (d) Postal ballot form.	27th April 2014
2.	Obtain consent of the Scrutinizer.	27th April 2014
3.	Hold the Board Meeting to do the following and announce to Stock Exchange: (i) Approve the documents drafted as in (1) above. (ii) Appoint the Scrutinizer. (iii) Pass a Resolution nominating a Managing Director/ Whole-time Director and the Company Secretary for being responsible to complete the ‘Postal Ballot’ process. (iv) Approve the calendar of events.	1st May 2014

4.	A copy of the Board Resolution alongwith the calendar of events to be forwarded to the Registrar of Companies within one week of the Board Meeting.	7th May 2014
5.	Print Notice, postal ballot forms and arrange for self-addressed envelopes (bearing the name and address of the Scrutinizer), address slips, etc.	14th May 2014
6.	Complete despatch of Notices (names of shareholders to be ascertained on a date as close as possible to the despatch date).	1st June 2014
7.	Release an advertisement in newspapers giving the date of completion of despatch of the Notice and the last date for receipt of postal ballot forms from the shareholders (thirty days from the last date of despatch).	3rd June 2014
8.	Last date for receipt of postal ballot forms.	1st July 2014
9.	To keep safe custody of all postal ballot forms in closed envelopes and put the receipt stamp on envelopes as and when these are received till the last date for receiving the postal ballot forms.	1st July 2014
10.	Preparation of Scrutinizer's Report and submission of the same to the Chairman by the Scrutinizer	17th July 2014
11.	Declaration of result.	17th July 2014
12.	Result to be displayed on Notice Board and released to the Press.	17th July 2014
13.	File the Resolution with Registrar of Companies.	16th August 2014
14.	Last date for signing the Minutes.	16th August 2014

NOTICE OF EXTRAORDINARY GENERAL MEETING

XYZ LIMITED

Registered Office : _____

NOTICE is hereby given that an Extra Ordinary General Meeting of the Members of XYZ Limited will be held on Friday, 25th October 2014 at 11:00 a.m. at _____ (address) to transact the following business:

Shifting of Registered Office

1. To consider and, if thought fit, to pass the following Resolution as a Special Resolution:

“RESOLVED THAT, pursuant to Section 12 and other applicable provisions, if any, of the Companies Act, 2013, and subject to the confirmation of the Regional Director, Ministry of Corporate Affairs, (as per jurisdiction) the Registered Office of the Company be shifted from the State of Delhi to the State of Haryana.

“RESOLVED FURTHER THAT Clause - II of the Memorandum of Association of the Company be altered by substitution of the word ‘National Capital Territory of Delhi’ with the words ‘State of Haryana.’

“AND RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorised to file the necessary petition(s) before the Regional Director, Ministry of Corporate Affairs(as per jurisdiction) for confirmation of the alteration of Clause - II of the Memorandum of Association of the Company as aforesaid and to carry out all other acts and deeds as are necessary in connection therewith, to give effect to this resolution..”

By order of the Board of Directors
PQR
Company Secretary

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Place : New Delhi.

Date : 30th September 2014

Notes:

1. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting. A Proxy form is enclosed.
2. The explanatory statement pursuant to Section 102 of the Companies Act, 2013, relating to special business to be transacted at the Meeting is annexed.

EXPLANATORY STATEMENT

As required by Section 102 of the Companies Act, 2013, the following explanatory statement sets out all material facts relating to the business mentioned under Item Nos. 1 and 2 of the accompanying Notice dated 30th September 2015.

Item No. 1

The Registered Office of the Company has been situated in New Delhi since the incorporation of the Company. The business of the Company has increased manifold since incorporation and it is expected that such growth trends will be maintained in future.

The employee strength of the Company has also increased manifold and the Company needs an area of around 50,000 square feet to accommodate the entire staff and to carry out its growing business activities efficiently. However, expansion at the present location is not possible and prevailing rentals in Delhi render it unviable to look for additional premises in the vicinity of the Registered Office.

The Board of Directors has identified suitable premises at Gurgaon in the State of Haryana, not very far from the present Registered Office. Acquiring such premises, situated close to Delhi, is advantageous for the Company to carry on its business more conveniently, economically and efficiently.

There also then is no need for retaining the present Registered Office accommodation and hence the Company has commenced preliminary negotiations for termination of the lease agreement.

In view of these advantages, the Board of Directors has decided to shift the Registered Office of the Company from the State of Delhi to the State of Haryana subject to necessary approvals. As required under Section 17 of the Act, a petition will be made to the Regional Director, Ministry of Corporate Affairs (as per jurisdiction) to obtain his confirmation for the proposed change.

A copy of the Memorandum of Association is available for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. upto the date of the Meeting and at the venue of the Meeting for the duration of the Meeting.

The Board commends the passing of the Resolution at Item No.1 as a Special Resolution. None of the Directors is concerned or interested in the proposed Resolution.

By order of the Board of Directors

Place : New Delhi.

PQR

Date : 30th September 2014

Company Secretary

NOTES ON AGENDA FOR EXTRAORDINARY GENERAL MEETING

Day & Date : Thursday, the 20th September, 2014

Time : 11.30 a.m.

1. Chairman :

Under Article 89, Shri A, Chairman & Managing Director will take the Chair.

If the Chairman is not present, one of the directors present, will be elected Chairman.

If no director is present or if present but unwilling, then one of the members present, will be elected Chairman of the meeting.

Shri proposes and Shri seconds the motion for appointing Shri as the Chairman of the meeting.

The motion is to be put to vote by show of hands.

Carried unanimously/by majority.

Shri to take the chair.

2. Quorum :

The Chairman on having ascertained that the requisite quorum is present has to call the meeting in order.

3. Notice of the Meeting :

Notice dated 16th August, 2014 convening the Extra Ordinary General Meeting is to/be taken as read with the consent of the meeting.

4. Mortgaging of Assets to IDBI and IFCI :

The Chairman to inform the members that the company has to mortgage its assets to Industrial Development Bank of India and the IFCI Limited to secure the Rupee Term Loans of ` 1000.00 lacs and ` 880.00 lacs respectively.

Then, he will ask the members to propose and second the Ordinary Resolution: Proposed by : Shri

“RESOLVED THAT consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act 2013 or any modification or re-enactment thereof, to mortgaging and/or charging by the Board of directors of the Company by way of equitable and/or legal mortgage on such immovable and movable properties of the Company, both present and future, together with power to takeover the assets of the Company in certain events, to or in favour of Industrial Development Bank of India (IDBI) and The Industrial Finance Corporation of India Ltd. (IFCI) by way of first *pari passu* Charge to secure the Rupees Term Loans of ` 1000.00 lacs and ` 880.00 lacs respectively granted to the Company together with interest at the agreed rate(s), liquidated damages, front end fees, premia on pre payment, costs, charges, expenses and all other moneys payable by the Company under the Loan Agreements, Deeds of Hypothecation and other documents executed/to be executed by the Company in respect of the Term Loans from IDBI and IFCI.

RESOLVED FURTHER THAT the Board of directors be and is hereby authorised and shall always be deemed to have been authorised to finalise with IDBI and IFCI the documents for creating the aforesaid mortgage and/or charge and to do all acts, deeds and things as may be necessary for giving effect to the above resolution.”

Seconded by : Shri

The motion was put to vote by show of hands. Carried unanimously/by majority.

5. Second Charge on Assets to SBI:

The Chairman to inform the members that the company has to Create Second Charge to secure the various fund based/non-fund based credit facilities sanctioned by State Bank of India, New Delhi.

Then, he will ask the members to propose and Second the Ordinary Resolution: Proposed by : Shri

“RESOLVED THAT consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013 or any modification or re-enactment thereof, to mortgaging and/or charging by the Board of directors of the Company by way of equitable and/or legal mortgage on such immovable and movable properties of the Company, both present and future, in favour of State Bank of India, New Delhi the Company’s Bankers by way of Second Charge to secure the various fund based/non-fund based credit facilities granted/to be granted to the Company and the interest at the agreed rate, costs, charges, expenses and all other moneys payable by the Company under the Deed(s) of Hypothecation and other documents executed/to be executed by the Company in respect of credit facilities of State Bank of India, in such form and manner as may be acceptable to State Bank of India.

RESOLVED FURTHER THAT the Board of directors be and is hereby authorised and shall always be deemed to have been authorised to finalise with State Bank of India the documents for creating the aforesaid mortgage and/or charge and to do all acts, deeds and things as may be necessary for giving effect to the above resolution.”

Seconded by : Shri

The motion was put to vote by show of hands. Carried unanimously/by majority.

6. Appointment of Managing Director:

The Chairman to inform that the Board of directors of the Company has reappointed Mr. A as Managing Director for a further period of 5 years w.e.f. 1.1.2014 and the resolution is for approval of the Shareholders of the company.

Then, he will ask the members to propose and/Second the Ordinary Resolution: Proposed by : Shri

“RESOLVED THAT pursuant to the provisions of Sections 196, 197, 203, Schedule V and other applicable provisions, if any, of the Companies Act 2013 or any modification or re-enactment thereof, the reappointment of Shri A as Managing Director of the Company for a period of 5 years with effect from 1st January, 2012 be and is hereby approved on the terms of remuneration as set out in the Explanatory Statement annexed hereto which shall be deemed to form part hereof, and in the event of inadequacy or absence of profits 197of the said Act in any financial year, the remuneration comprising salary, commission, perquisites and benefits as approved herein be paid as minimum remuneration to the Managing director subject to the approval(s), if any, as may be required.

RESOLVED FURTHER THAT the Board of directors be and is hereby authorised to take steps as may be necessary to give effect to this resolution and to settle any question or difficulties in connection therewith or incidental thereto.”

Seconded by : Shri

The motion was put to vote by show of hands. Carried unanimously/by majority/*nem con*.

7. Confirmation to Guarantee Issued by the Company :

The Chairman to inform that due to urgency, the Board of directors had given corporate guarantee to Hongkong & Shanghai Banking Corporation Ltd. subject to confirmation by the Shareholders of the Company. The resolution is for their confirmation.

Then he has to ask the members to propose and second the Special Resolution: Proposed by : Shri

“RESOLVED THAT pursuant to Section 186(2) and other applicable provisions, if any, of the Companies Act 2013 or any modification or re-enactment thereof, the guarantee of the company for ` 5,46,10,000/- furnished by the Managing Director of the Company as per the resolution passed in the meeting of the Board of directors of the company held on 29.7.2014, to The Hongkong and Shanghai Banking Corporation Ltd., New Delhi, for the Banking facilities granted to W&M (India) Ltd., in lieu of the guarantee for ` 5,61,66,250 furnished earlier be the company, by and is hereby confirmed and approved.”

Seconded by : Shri

The motion was put to vote by show of hands. Carried unanimously/by majority.

8. Authority to make investments, loans and guarantees:

The Chairman to inform that the company would have to make investment in Shares of W&M (India) Limited promoted by the Company and give guarantees to the bankers for banking facilities granted to W&M (India) Limited and XY Packagings Private Limited the associated companies. The resolution is for approval of the Shareholders.

Then, he will ask the members to propose and second the Special Resolution: Proposed by : Shri

“RESOLVED THAT pursuant to Section 186(2) and other applicable provisions, if any, of the Companies Act, 2013 or any modification or re-enactment thereof and subject to the approvals of the Financial Institutions, if any, as may be required, approval of the company be and is hereby accorded to the Board of directors of the company for directly or indirectly making of investments by way of subscription, purchase or otherwise in equity shares of, and/or making loans and/or giving guarantees and/or providing securities in connection with loan(s) made/to be made by any bank, company or person to, the following companies promoted or associated with the company for the total sum not exceeding ` 2,600.00 lac from and out of the company's internal accruals, over and above the existing investments in shares/ debentures/other securities, loans and guarantees made or given by the company, as under:-

(` in lacs)

	<i>in Equity Shares</i>	<i>(` in lacs)</i>	<i>Security</i>	
W&M (India) Ltd.	1000.00	400.00	1200.00	2200.00
XY Packagings Pvt. Ltd.	Nil	100.00	350.00	400.00
				2600.00

RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorised to make investments/loans, give guarantee(s), provide security(ies), for the amount as specified above, as it may be deemed fit and proper and to authorise any director(s) and/or officer(s) of the company to finalise the terms of such investment(s), loan(s), guarantee(s), security(ies) as the case may be and sign necessary papers on behalf of the company and take all necessary steps for giving effect to this resolution.”

Seconded by : Shri

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The motion was put to vote by show of hands.

Carried unanimously/by majority.

9. Vote of thanks:

One of the members shall propose a vote of thanks to the Chair.

**MINUTES OF THE PROCEEDINGS OF THE TH (SERIAL NO.) EXTRA-ORDINARY GENERAL MEETING
OF XYZ LIMITED
HELD ON FRIDAY, 25TH OCTOBER 2014 FROM
11:00 A.M. to 01:00 P.M. AT _____(address)**

The following were present:

1. Mr. A (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. D (Director and Member)
5. Mr. F (Company Secretary)
6. _____ (Members present in person) {state number}
7. _____ (Members present by Proxy) {state number}

CHAIRMAN

In accordance with Article _____ of the Articles of Association, Mr. A, Chairman of the Board of Directors, took the Chair.

{OR:

Mr. B was elected Chairman of the Meeting, in terms of Article ___ of the Articles of Association of the Company}

The Chairman welcomed the Members. He declared that the requisite Quorum was present and called the Meeting to order.

With the consent of the Members present, the Notice convening the Extra-Ordinary General Meeting of the Company was taken as read.

The business of the Meeting, as per the Notice thereof, was thereafter taken up item-wise.

1. Shifting of the Registered Office

Proposed by : Mr. _____

Seconded by : Mr. _____

The following Resolution having been proposed and seconded by the aforementioned two Members was put to the vote as a Special Resolution:

“RESOLVED THAT, pursuant to Section 12 and other applicable provisions, if any, of the Companies Act, 2013, and subject to the confirmation of the Regional Director, Ministry of Corporate Affairs, (as per jurisdiction), the Registered Office of the Company be shifted from the State of Delhi to the State of Haryana.

“RESOLVED FURTHER THAT Clause II of the Memorandum of Association of the Company be altered by substitution of the words “National Capital Territory of Delhi” with the words “State of Haryana”.

“AND RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorised to file

necessary petition(s) before the Regional Director, Ministry of Corporate Affairs, (as per jurisdiction) for confirmation of the alteration of Clause II of the Memorandum of Association of the Company as aforesaid and to carry out all other acts and deeds as are necessary in connection therewith..

On a show of hands, the Chairman declared the aforesaid Special Resolution carried by the requisite majority.

On a show of hands, the Chairman declared the aforesaid Special Resolution carried by the requisite majority.

TERMINATION OF THE MEETING

The Meeting terminated with a vote of thanks to the Chair.

CHAIRMAN

Date : _____

**SPECIMEN FORM OF WRITTEN CONSENT TO VARIATION OF
CLASS SHAREHOLDERS' RIGHTS**

We, the holders of issued share capital in A.B.C. Company Ltd., pursuant to Section 48 of the Companies Act, 2013, read with Article of the Articles of Association of the Company consent to the following variation of the rights attached or belonging to the said shares proposed to be effected thereto :

Signatures of shareholders:

- (1)
- (2)
- (3)
- (4)

Note

The consent can be effective only if it is given by such number of shareholders as are holding not less than 3/4th of the issued share capital of that class.

SPECIMEN BOARD RESOLUTION AND NOTICE OF CLASS MEETING

(a) Board Resolution to call a class meeting

RESOLVEDTHATa meeting of the preference shareholders of the Company be convened and held on the day of 20 at atA.M/
P.M. for considering, and if thought fit, adopting the following resolutions:

- “(1)
-”“(2)
-”

(Indicate the resolutions)

RESOLVED FURTHER THAT the Company Secretary be and is hereby directed to issue notice of the meeting to the members entitled to attend the meeting.

Where on the same day an extraordinary general meeting of the Company is also to be held, the same resolution can provide further:

RESOLVED FURTHER THAT an extraordinary general meeting of the Company be convened and held on at at for considering, and, it thought fit, passing the following resolution :

“.....” and that the Company Secretary be and is hereby directed to issue notice thereof.

(b) Notice of class meeting

Notice is hereby given that a Separate Class Meeting of the holders of..... per cent Redeemable Cumulative Preference Shares in the share capital of the Company will be held at the Registered Office of the Company at.....on..... at A.M./P.M. to transact the following business:

Special Business

- 1. To consider and, if thought fit, to pass the following resolution as a Special Resolution with or without modification :

RESOLVED THAT subject to the compliance of the provisions of the SEBI regulations and in pursuance of Section 61 and other applicable provisions, if any, of the Companies Act, 2013, consent of the Company be and is hereby accorded for the extension in the redemption period of to years of the Redeemable Cumulative Preference Shares of ` each of the Company, of which Redeemable Cumulative Preference Shares of ` each were allotted on and Redeemable Cumulative Preference Shares of ` each were allotted on by a further period of years from their respective due dates of redemption, namely, and for the Redeemable Cumulative Preference Sharesof ` each so that the Redeemable Cumulative Preference Shares shall be redeemable in two annual installments of ` and ` on and respectively.

RESOLVED FURTHER THAT on such extension becoming effective, the rate of cumulative preference dividend on the said redeemable Cumulative Preference shares be increased from % to % from the said due dates of redemption.

- 2. To consider and, if thought fit to pass the following Resolution as a Special Resolution with or without modification :

Resolved that on the above resolution becoming effective, existing Clauses and of the Articles of Association be substituted by the following :

“.....”

An Explanatory statement pursuant to Section 102 of the Companies Act, 2013, is annexed hereto. All Redeemable Cumulative Preference shareholders are requested to be present in person or by proxy. A member entitled to attend and vote at a meeting is entitled to appoint a proxy to attend and vote instead of himself and a proxy need not be a member.

By Order of the Board

Place :

Dated :

Company Secretary

Explanatory Statement

(As required by Section 102 of the Companies Act, 2013).

Item No. 1

The Company had issued a total of Redeemable Cumulative Preference Shares of ` each, of which Redeemable Cumulative Preference Shares of ` each were allotted on and Redeemable Cumulative Preference Shares of ` each were allotted on

According to the terms of issue, these shares are redeemable on or after the expiry of years from the date of allotment of the respective shares but not later than years. Therefore, the Redeemable Cumulative Preference Shares of ` each are due for redemption on..... and the Redeemable Cumulative Preference Shares of ` each are due for redemption on

Owing to the loss suffered during the year amounting to ` lakhs and having still a carried forward loss of ` lakhs as at the each of, the Company is unable to find the resources for the redemption of the Redeemable Cumulative Preference Shares on the due dates. The Company cannot also create a reserve out of profits for the redemption of the Redeemable Cumulative Preference Shares, as there are no profits carried forward at the end of the year. Further, it is also necessary for the Company to conserve its financial resources in order to improve the working capital base. Hence, the Company is not in a position to redeem the shares on the due dates.

It is, therefore, proposed to extend the date of redemption in respect of the above Redeemable Cumulative Preference Shares by a period of years from their respective due dates of redemption so that the Redeemable Cumulative Preference Shares of ` each amounting to ` be redeemed on and the Redeemable Cumulative Preference Shares of ` each amounting to ` be redeemed on The Company has already obtained the consent for this purpose from financial institutions holding a total of the Redeemable Cumulative Preference Shares of the Company.

The consent of the Preference Shareholders of the Company in this Separate Class Meeting is required to be obtained in terms of the provisions contained in Section 106 of the Companies Act, 2013, since the dates of redemption of the said Redeemable Cumulative Preference Shares are now sought to be extended resulting in a variation in the terms of issue of the preference shares.

The proposed Resolutions being in the interest of the Company and shareholders, are commended for the acceptance of the members.

The letters received from (financial institutions) and according their respective consents containing the terms and conditions as aforesaid can be inspected at the Registered Office of the Company at on any working day during office hours.

None of the Directors of the Company is interested in the above resolution.

By Order of the Board

Place :

Date :

Company Secretary

LESSON ROUND UP

- A Company being an artificial person cannot act on its own. It, therefore, expresses its will or takes its decisions through Resolutions passed at validly held meetings.
- The primary purpose of a meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures.
- The powers relating to the affairs of a company are divided between the Board and shareholders of the company.
- The management of the affairs of the company is vested in the Board and all powers excepting those which are specifically reserved for the general meeting by the Act or the articles or memorandum or otherwise must be exercised by the Board.
- Boards of Directors are responsible for the governance of their companies and accountable for the resources entrusted to it by the shareholders.
- The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place.
- If authorised by the Articles, the Directors may delegate all or any of their powers to Committees subject to such restrictions and limits as may be prescribed.
- The meetings of a company under the Companies Act are Meetings of Directors (including Committees of Directors), Meetings of Shareholders (AGM, EGM, and Class Meetings), and Meetings of Debenture-holders, Meetings of the creditors (in winding up and otherwise than in winding up). There may also be meetings convened on the directions of the Court.
- Section 173 provides the participation of directors in a meeting may be either in person or through video conferencing or other audio visual means, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.
- Section 109(4) stipulates the time for taking a poll at a General Meeting and provides that when a poll is demanded on the question of adjournment of the Meeting or if it pertains to the Resolution for election of a Chairman of the Meeting under Section 175, it must be taken "forthwith", i.e. immediately after it is demanded. When a poll is demanded on any other Resolution, the Chairman should decide the time for taking a poll and such poll should be taken within forty-eight hours from the time when the demand was made.
- Section 108 of the act provides that any company may opt voting through electronic means voting by electronic mode means a process for recording voted by the members using a computer based machine to display an electronic ballot and to record the vote and also the number of votes polled in favor or against such that the entire voting gets registered and counted in a electronic registry in a centralized server.
- According to Section 110 of the Companies Act, 2013 provides that a company shall transact businesses notified by Central Government through postal ballot only in general meeting.
- Adjournment means to defer or suspend the meeting to a future time, either at an appointed date or indefinitely or as decided by the members present at the scheduled Meeting.
- The Chairman may adjourn a Meeting with the consent of the Members and shall adjourn a Meeting if so decided by the Members. The Meeting may, however, be adjourned at any time. It may be adjourned after some items of business have been transacted and the remaining items can be transacted at the adjourned Meeting.

Lesson 11

Auditors

LESSON OUTLINE

- Procedure for Selection of Auditor
- Procedure of Appointment of First Auditor
- Procedure of Appointment of Auditor at any AGM
- Procedure for Rotation of Auditor
- Procedure for Appointment of an Auditor in Casual Vacancy
- Re-appointment of Auditor
- Resignation of Auditor
- Removal of Auditor
- Fraudulent by Auditor
- Eligibility, Qualification and Disqualification of Auditors
- Remuneration of Auditors
- Powers and Duties of Auditors
- Auditor's Report
- Supplementary Audit, Test Audit, Branch Audit, Cost Audit
- Companies (Auditors's Report) Order, 2015
- Secretarial Audit
- Annexures – Specimen Resolutions
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

For every company it is mandatory to appoint an Auditor (an individual or firm) the auditors are required to form an opinion as to whether the annual accounts of a company give a true and fair view of its profit or loss for the period under review. They are also required to certify that the accounts are prepared in accordance with the requirement of the Companies Act 2013. Auditors play an important role by giving the Auditor's Report which is a report to the members of a company in accordance with section 134.

After going through this lesson, you will be able to understand the various procedural aspects relating to auditors of the company.

STATUTORY AUDITOR

According to section 139 every company shall, at the first annual general meeting, appoint an individual or a firm (*firm includes LLP*) as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.

Here, “Appointment” includes reappointment and “auditor” includes a ‘firm’ which includes a limited liability partnership (LLP).

MANNER AND PROCEDURE OF SELECTION AND APPOINTMENT OF AUDITORS

The manner and procedure of selection of auditors has been specified under rule 3 of Companies (Audit and Auditors) Rules, 2014.

Consideration of Qualification and experience for the appointment as auditors by the Audit Committee/Board:

In the case of a company that has constituted an Audit Committee under section 177, the audit committee and in other case; the Board shall take into consideration, the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company. While considering the appointment, the Board or 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 before the Institute of Chartered Accountants of India or the National Financial Reporting Authority or Tribunal or any Court of law. [Rule 3(1)]

Recommendation by Audit Committee/Board

Where a company has constituted an audit committee, the audit committee shall recommend the name of an individual or a firm as auditor to the Board. In other cases, the Board shall consider and recommend an individual or a firm as auditor to members in the annual general meeting for appointment. [Rule 3(3)]

If the Board is satisfied with the recommendation of the audit committee, it shall consider and recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting. [Rule 3(4)]

If the Board is not satisfied with the recommendation of the audit committee, it may send back the recommendation to the audit committee for reconsideration with their reasons. [Rule 3(5)]

If the Audit Committee, after considering the reasons given by the Board, does not agree to reconsider its recommendation, the Board shall submit to the members its own recommendation for consideration of members and appointment of one of them as Auditors and shall explain the reasons for not accepting the recommendation of the audit committee in the Board’s report. [Rule 3(6)]

Explanation. - For the purpose of constitution of Audit Committee section 177 of the Act read with the Companies (Meetings of Board and its Powers) Rules, 2014 provides that: The Board of directors of every listed public companies and the following classes of companies shall constitute an Audit Committee of the Board-(i) all public companies with a paid up capital of ten crore rupees or more;(ii) all public companies having turnover of one hundred crore

rupees or more;(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Here the paid up share capital, loans or turnover or borrowings or deposits or debentures shall be taken on the date of last audited financial statement.

Appointment to be at Annual General Meeting

The members at the annual general meeting shall appoint auditor of the company, recommended by the Board who shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, counting the current meeting as the first meeting. . [Rule 3(7)]

Conditions for Appointment

Before such appointment is made, the company shall obtain a written consent of the (proposed) auditor to such appointment, and a certificate from him/it that the appointment, if made, shall be in accordance with the conditions as prescribed under rule 4 of Companies (Audit and Auditors) Rules, 2014, namely:

- (a) The individual or firm is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and Rules and Regulations made therein.
- (b) the proposed appointment is within the term allowed under the Act.
- (c) the proposed appointment is within the limit laid down in the Act.
- (d) 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.

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141 (eligibility, qualifications and disqualifications of auditors) of the Companies Act, 2013.

Intimation to the Auditor and the Registrar:

The company shall inform the auditor concerned of his/ its appointment, and also file a notice of such appointment in **Form ADT-1** with the Registrar within fifteen days of the meeting in which the auditor is appointed. [fourth proviso to section 139(1)]

However, a Specified IFSC public and private company shall file such notice of appointment of auditor with the Registrar within thirty days of the meeting in which he was appointed.

APPOINTMENT OF FIRST AUDITOR

The procedure of appointment of first auditor can be described under two broad headings as per the details given below.

Appointment of first auditor in case of every company except government company or company owned/ controlled by Central Government/State Government/Central Government and State Government [Section 139(6)] :

The first auditor of a company, **other than a Government company**, shall be appointed by the Board within **thirty days from the date of registration** of the company and if the Board fails to appoint such auditor, it shall inform the members of the company and the members shall make the appointment of first auditor within **ninety days of information at an extra ordinary general meeting** and such auditor shall hold office till the conclusion of the first annual general meeting.

Appointment of first auditor in case of government company or company owned/controlled by Central Government (CG)/State Government(SG)/Central Government and State Government [Section 139(7)] :

Appointment of first auditor shall be made by Comptroller and Auditor-General of India (CAG) within **sixty days of from the date registration** of the company. If CAG fails to appoint the first auditor within given time then Board of such company shall appoint first auditor **within next 30 days**. If Board fails to appoint the first auditor within given time then it shall inform to members and members shall make the appointment of first auditor **within 60 days of information** at an extra ordinary general meeting. The First Auditor shall hold office till the conclusion of first AGM.

According to section 2(45) of the Act, Government company means any company in which not less than fifty-one percent of the paid-up share capital is held by-

- (a) Central Government; or
- (b) State Government(s); or
- (c) Partly by Central Government and partly by one or more State Government(s).

'Government Company' includes a company which is a subsidiary company of a Government company.

Tenure of first auditor: *The first auditor shall hold office till the conclusion of the first annual general meeting [Section 139(6) and 139(7)]*

Procedure of Appointment of First Auditor

In case of a company, other than a Government company:

General procedure of appointment of first auditor in case of a company, **other than a Government company** is as follows.

- (1) Obtain certificate in writing from the proposed auditor confirming his eligibility and consent to be appointed as auditor of the company.
- (2) Convene a Board meeting within 30 days of registration of the company after giving notice to all directors as per section 173 of the Act and pass a resolution for appointing the first auditor and fixing his remuneration.
- (3) Inform the first auditor so appointed with a certified copy of the resolution.
- (4) Company shall file notice of such appointment in ADT-1 to Registrar within fifteen days of such Board meeting.

Procedure where the auditor is not appointed by the Board:

Section 139 (6) lays down that if the Board fails to exercise its power to appoint the first auditor within 30 days of registration of company, the Board shall intimate such failure to the members of the company. In this case, the following procedure is to be adopted-

- (1) Convene a Board meeting, discuss the matter, decide the day, date, time and place of the general meeting (extra-ordinary general meeting) which shall not be beyond 90 days of Board's information of failure to appoint first auditor and approve the notice of the meeting.
- (2) Issue notice of extra-ordinary general meeting to the members of the company.
- (3) Hold the extra-ordinary general meeting and pass resolution for appointing the first auditor.
- (4) Immediately inform the first auditor of his appointment, forwarding therewith a certified copy of the resolution passed at the meeting.
- (5) Such auditors shall hold office till the conclusion of first AGM.

In case of Government Companies:

Appointment of first auditor shall be made by the Comptroller and Auditor-General of India (CAG) within **sixty days of registration** of the company. If CAG fails to appoint the first auditor within the 60 days of registration of the company, the following procedure follows.

- (1) Obtain certificate in writing from the proposed auditor confirming his eligibility and consent to be appointed as auditor of the company.
- (2) Convene a Board meeting within 30 days of getting information of CAG's failure to appoint first auditor after giving notice to all directors as per section 173 and pass a resolution for appointing the first auditor and fixing his remuneration.
- (3) Inform the first auditor so appointed with a certified copy of the resolution.

Procedure where the auditor is not appointed even by the Board:

Section 139 (7) lays down that if the Board fails to exercise its power to appoint the first auditor within 30 days of getting information of CAG's failure to appoint first auditor of company, the Board shall intimate such failure to the members of the company. In this case, the following procedure is to be adopted-

- (1) Convene a Board meeting, discuss the matter, decide the day, date, time and place of the general meeting (extra-ordinary general meeting) which shall not be beyond 60 days of Board's information of failure to appoint first auditor and approve the notice of the meeting.
- (2) Issue notice of extra-ordinary general meeting to the members of the company.
- (3) Hold the extra-ordinary general meeting and pass resolution for appointing the first auditor.
- (4) Immediately inform the first auditor of his appointment, forwarding therewith a certified copy of the resolution passed at the meeting.

Appointment of Subsequent Auditor in case of Government Company or company owned/ controlled by CG/SG/CG and SG [Section 139(5)]:-

Appointment or reappointment of auditor in case of Government Company or company owned/ controlled by CG/ SG/CG and SG shall be made by CAG within 180 days from the commencement of financial year i.e. 1st April of each year. The Auditor shall hold office till the conclusion of AGM.

Doubts have been raised about applicability of sections 139(5) and 139(7) of the Companies Act, 2013 (New Act), which deal with appointment of auditors by Comptroller and Auditor General of India (C&AG), to 'deemed Government Companies' referred to in section 619B of the Companies Act 1956 (Old Act) i.e. companies where ownership or control lies with two or more Government companies or corporations etc in the manner detailed in section 619B *ibid*. Stakeholders have pointed out that the New Act does not contain specific provisions about 'deemed Government companies' on the lines of section 619B of the Old Act. Clarification has been sought whether, under the new Act, such deemed Government companies would be subject to audit by the C&AG in the same manner as Government Companies. The above issue has been examined and it is clarified that the new Act does not alter the position with regard to audit of such deemed Government companies through C&AG and thus such companies are covered under sub-section (5) and (7) of section 139 of the New Act. Clarification has also been sought about the manner in which the information about incorporation of a company subject to audit by an auditor to be appointed by the C&AG is to be communicated to the C&AG for the purpose of appointment of first auditors under section 139(7) of the New Act. It is hereby clarified that such responsibility rests with both, the Government concerned and the relevant company. To avoid any confusion it is further clarified that it will primarily be the responsibility of the company concerned to intimate to the C&AG about its incorporation along with name, location of registered office, capital structure of such a company immediately on its incorporation. It is also incumbent on such a company to share such intimation to the relevant Government so that such Government may also send a suitable request to the C&AG. (MCA General Circular No. 33/2014 dated 31st July, 2014)

APPOINTMENT OF AUDITORS AT AGM (FIRST AGM AND SUBSEQUENT AGM)

Appointment of Subsequent Auditor in case of every company except Government Company or company owned/ controlled by Central G/SG/CG and SG [Section 139(1):-

Appointment of auditor shall be made by members at First AGM and every subsequent 6th AGM. At the first AGM, every company shall appoint an individual or a firm as an auditor. The auditor so appointed shall hold office from the conclusion of first AGM till the conclusion of 6th AGM. 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 1st AGM. At every AGM (viz. 2nd, 3rd, 4th and 5th AGM), the appointment of auditor shall be ratified by the members. If at any AGM, the appointment of auditor is not ratified by the members, the Board of Directors shall appoint another individual or firm as its auditor(s) after following the procedure laid down under the Act [Explanation to Rule 3(7)]. Simply speaking, 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.

PROCEDURE OF APPOINTMENT OF AUDITOR AT ANY AGM:

The manner and procedure of selection of auditors by the members of the company at any AGM has been specified under rule 3 of Companies (Audit and Auditors) Rules, 2014.

1. The qualification and experience of the individual or the firm proposed to be appointed as auditor shall be considered by –
 - (a) The Board; or
 - (b) The audit committee, in case the company is required to constitute an Audit committee.
2. 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.
3. The Board/Audit Committee may call for such other information from the proposed auditor as it may deem fit.
4. In case the company is not required to constitute the Audit committee, the Board shall consider and recommend an individual or a firm as auditor to the members in the AGM for appointment.
5. In case the company is required to constitute the Audit Committee, following procedure shall be adopted:
 - (a) The audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration.
 - (b) If the Board agrees with the recommendation of the audit committee, it shall further recommend such individual or such firm as auditor to the members in the AGM for appointment.
 - (c) If the Board dis agrees with the recommendation of the audit committee, it shall refer back the recommendation to the audit committee for reconsideration citing reasons for such dis agreement.
 - (d) If the audit committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, and the Board continues to disagree with the recommendations of the audit committee, the Board shall –
 - (i) record reasons for its disagreement with the committee
 - (ii) send its own recommendation for consideration of the members in the AGM;
 - (e) If the audit committee, after considering the reasons given by the Board, decides not to reconsider its

original recommendation, and the Board agrees with the recommendations of the audit committee, the Board shall recommend the name of the individual or the firm as recommended by the Audit committee to the members in the AGM for appointment.

- (f) The appointment will be considered at the duly convened annual general meeting of the company and the necessary resolution be passed.
- (g) The auditor must be intimated of his appointment and certified copy of resolution of appointment must be sent to the auditor.
- (h) Then, company is required to file a notice about the appointment of auditor(s) with the Registrar in **form ADT-1** along with filling fees and necessary enclosures within 15 Days of the meeting. [fourth proviso to section 139(1)]

ROTATION OF AUDITOR [SECTION 139(2) and 139 (4)]

The section 139(2) of the Companies Act, 2013 has introduced the system of rotation of auditors which is applicable to –

- (i) listed companies; or
- (ii) all companies belonging to such class or classes of companies as prescribed under Rule 5 of the Companies (Audit and Auditors) Rules 2014.

Class of companies covered in rotation scheme:

According to Rule 5 of the Companies (Audit and Auditors) Rules, 2014 and for the purposes of sub-section (2) of section 139, the class of companies shall mean the following classes of companies excluding one person companies and small companies:-

- (a) all unlisted public companies having paid up share capital of rupees 10 crore or more;
- (b) all private limited companies having paid up share capital of rupees 20 crore or more;
- (c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crore or more.

The concept of rotation of auditors shall not apply to one person companies and small companies.

The provisions for rotation of auditors under sub-sections (2), (3) and (4) of section 139 are given below:

In case of an individual as auditor:

- (a) No individual shall be appointed or re-appointed as auditor for more than 1 term of 5 consecutive years and
- (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 completion of his term.

In case of a firm as an auditor:

- (a) No audit firm shall be appointed or re-appointed 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.
- (c) *If any firm/LLP which has one or more partners who are also partners in the outgoing audit firm/LLP cannot be appointed as auditors of same company for a period of 5 years.* In other words, if two or more audit firms have common partner(s), and one of these firms has completed its 2 terms of 5 consecutive years, none of such audit firms shall be eligible for re-appointment as auditor in the same company for 5 years.

The aforementioned provisions can be explained by the following examples.

Example 1: Mr. X has completed 5 years in M/s ABC Ltd. in FY 2012-13. Now, he is not eligible for re-appointment for next 5 years in M/s ABC Ltd.

Example 2: Firm XYZ has completed 10 years in M/s ABC Ltd. Now, he is not eligible for re-appointment for next 5 years M/s ABC Ltd.

Example 3: If Mr. X is a common partner in firm XYZ and Firm VWX, then Firm VWX is also not eligible for appointment as auditor in M/s ABC Ltd for that 5 years (i.e. from 2013-14).

Transition Period

There is a transition period of three years, from date of enactment of the 2013 Act, to comply with this requirement. All listed companies or specified companies will have to comply with the above provisions relating to rotation of auditors within 3 years from the date of commencement of this Act i.e. within 31st March 2017.

The aforementioned provisions can be explained by the following illustration in a better manner.

If ABC & Co. is auditor of M/S XYZ Ltd. and the balance sheet of M/S XYZ Ltd. is being signed by Mr. A who is also a partner in other firm PQR & Co. If the original tenure of appointment of ABC & Co. is expiring on 20th August, 2020. The firm PQR & Co. can't take the appointment of auditor of M/S XYZ Ltd. for the period of five years starting from 21st August, 2020 and up to 20th August, 2025.

In the above example, PQR & Co. can take the advantage of being appointed as auditor on a date starting after the expiry of financial year 2020-2021. In simple words, PQR & Co. is being eligible for appointment of auditor of M/S XYZ Ltd. after the start of new financial year from the expiry of original tenure of ABC & Co., as the proviso mentions only of one preceding financial year.

Right of removal or resignation not affected [4th proviso to Section 139(2)]

1. The right of the company to remove an auditor before expiry of one or two term(s) of 5 consecutive years shall not be affected due to any provision contained in section 139(2).
2. The right of auditor to resign from the office of auditor before expiry of one or two term (s) of 5 consecutive years shall not be affected due to any provision contained in section 139(2).

The transition period shall not apply to a Specified IFSC public and private company.

Internal Rotation [Sub-section (3) of Section 139]

Besides the above rotation, the members of the company may also resolve to provide that -

- (a) in the audit firm appointed by it, the **auditing partner** and his team shall be **rotated** at such **intervals** as may be resolved by members; or
- (b) the audit shall be conducted by more than one auditor.

Position of Joint Auditors

According to sub-rule (4) of Rule 6 of The Companies (Audit and Auditors) Rules, 2014, where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

MANNER AND PROCEDURE FOR ROTATION OF AUDITOR

Manner of rotation of auditor by the companies on expiry of their term:

Rule 6 of The Companies (Audit and Auditors) Rules, 2014, prescribes the following manner of rotation of auditors by the companies:

1. In case the company is required to constitute an audit committee, the procedure shall be as follows:

- (a) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
 - (b) The Board shall consider the recommendation of the audit committee.
 - (c) The Board shall make its own recommendation for appointment of the next auditor by the members in the AGM.
2. In case the company is not required to constitute an audit committee, the procedure shall be as follows:
 - (a) The Board shall itself consider the matter of rotation of auditors.
 - (b) The Board shall make its own recommendation for appointment of the next auditor by the members in the AGM.
 3. In case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be.
 4. The incoming auditor or audit firm shall **not** be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.
 5. If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such **other firm** shall also be **ineligible** to be appointed for a period of 5 years.
 6. The term “same network” includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control (Explanation I, Point (a)).
 7. For the purpose of rotation of auditors, a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation; (Explanation II)

Illustration explaining rotation in case of Individual Auditor

The following illustration tries to explain the total tenure of appointment in case of Individual Auditor being appointed before the commencement of provisions of Section 139(2) of the Act.

Number of consecutive years for which an individual auditor firm has been functioning as auditor in the same company [In the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)	Aggregate period which the auditor would complete in the same company in view of column I and II [Total of years covered from date of appointment, being appointment before the commencement of provisions of Section 139(2)]	Example
I	II	III	IV
5 Years (or more than 5 years)	3 Years	8 Years or more	Auditors being appointed in AGM on 30.09.2009 (or before) can hold their office till the AGM to be held on or before 29.09.2017

4 years	3 years	7 years	Auditors being appointed in AGM on 30.09.2010 can hold their office till the AGM to be held on or before 29.09.2017.
3 years	3 years	6 years	Auditors being appointed in AGM on 30.09.2011 can hold their office till the AGM to be held on or before 29.09.2017.
2 years	3 years	5 years	Auditors being appointed in AGM on 30.09.2012 can hold their office till the AGM to be held on or before 29.09.2017.
1 year	4 years	5 years	Auditors being appointed in AGM on 30.09.2013 can hold their office till the AGM to be held on or before 29.09.2018.

Illustration explaining rotation in case of Audit firm

The following illustration tries to explain the total tenure of appointment in case of Audit firm being appointed before the commencement of provisions of Section 139(2) of the Act.

Number of consecutive years for which an audit firm has been functioning as auditor in the same company [In the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)	Aggregate period which the firm would complete in the same company in view of column I and II [Total of years covered from date of appointment, being appointment before the commencement of provisions of Section 139(2)]	Example
I	II	III	IV
10 years (or more than 10 years)	3 years	13 years or more	Audit firm being appointed in AGM on 30.09.2004 (or before) can hold their office till the AGM to be held on or before 29.09.2017.
9 years	3 years	12 years	Audit firm being appointed in AGM on 30.09.2005 can hold their office till the AGM to be held on or before 29.09.2017.
8 years	3 years	11 years	Audit firm being appointed in AGM on 30.09.2006 can hold their office till the AGM to be held on or before 29.09.2017.

7 years	3 years	10 years	Audit firm being appointed in AGM on 30.09.2007 can hold their office till the AGM to be held on or before 29.09.2017.
6 years	4 years	10 years	Audit firm being appointed in AGM on 30.09.2008 can hold their office till the AGM to be held on or before 29.09.2018.
5 years	5 years	10 years	Audit firm or LLP being appointed in AGM on 30.09.2009 can hold their office till the AGM to be held on or before 29.09.2019.
4 years	6 years	10 years	Audit firm or LLP being appointed in AGM on 30.09.2010 can hold their office till the AGM to be held on or before 29.09.2020.
3 years	7 years	10 years	Audit firm or LLP being appointed in AGM on 30.09.2011 can hold their office till the AGM to be held on or before 29.09.2021.
2 years	8 years	10 years	Audit firm or LLP being appointed in AGM on 30.09.2012 can hold their office till the AGM to be held on or before 29.09.2022.
1 year	9 years	10 years	Audit firm or LLP being appointed in AGM on 30.09.2013 can hold their office till the AGM to be held on or before 29.09.2023.

Note:

- (1) Individual auditor shall include other individuals or firms whose name or trade mark or brand is used by such individual, if any.
- (2) Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners.
- (3) Consecutive years shall mean all the preceding financial years for which the individual auditor/firm has been the auditor until there has been a break by five years or more.

CASUAL VACANCY IN THE OFFICE OF AUDITORS [SECTION 139(8)]

The term casual vacancy has not been defined in Companies Act, 2013. Generally, it means a vacancy caused due to death, disqualification, resignation etc of the auditor after accepting a valid appointment because of which the auditor cease to act as auditor of the company. Where no auditor is appointed or re-appointed, it does not result casual vacancy.

PROCEDURE IN REGARD TO APPOINTMENT OF AN AUDITOR IN CASUAL VACANCY:

The procedure of appointment of auditor in case of casual vacancy can be discussed under two broad headings.

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Appointment of auditor in Casual Vacancy in every company except Govt. Company or company owned/ controlled by CG/SG/CG and SG [Section 139(8)(i):-

Casual vacancy arising by other than resignation: Whereas casual vacancy is arising by other than resignation then vacancy shall be filled the Board within 30 days.

Procedures:

1. Obtain certificate in writing from the proposed auditor confirming his eligibility to be appointed.
2. Convene a Board meeting within 30 days of arising casual vacancy after giving notice to all directors and pass resolution appointing the new auditor in the place of old auditor.
3. Inform the auditor so appointed with a certified copy of resolution.
4. Inform the Registrar in prescribed form with requisite filing fee and annexures.

Casual vacancy arising due to resignation: If casual vacancy is arising 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 from the date of recommendation of the Board.

Procedures:

1. Obtain certificate in writing from the proposed auditor confirming his eligibility to be appointed.
2. Convene a Board meeting within 30 days of arising casual vacancy after giving notice to all directors and pass resolution appointing the new auditor in the place of old auditor.
3. Inform the auditor so appointed with a certified copy of resolution.
4. Issue notice to hold general meeting within 3 months from the date of recommendation of the Board to the members of the company.
5. Hold the general meeting and approve the appointment of auditor already made by the Board of directors.
6. Inform the Registrar in prescribed form with requisite filing fees and annexures.

Appointment of auditor in Casual Vacancy in case of Govt. Company or company owned/ controlled by CG/SG/CG and SG [Section 139(8)(ii)] :

Casual vacancy shall be filled by the CAG within 30 days. If CAG fails to fill the vacancy within given time then BOD shall fill the vacancy within next 30 days.

Procedures:

The following procedure follows after the CAG's failure to appoint auditor to fill up casual vacancy within 30 days.

1. Obtain certificate in writing from the proposed auditor confirming his eligibility to be appointed.
2. Convene a Board meeting within 30 days of information of CAG's failure to appoint auditor to fill up casual vacancy after giving notice to all directors and pass resolution appointing the new auditor in the place of old auditor.
3. Inform the auditor so appointed with a certified copy of resolution.

Inform the Registrar in prescribed form with requisite filing fees and annexures.

RE-APPOINTMENT OF RETIRING AUDITOR [SECTION 139(9) & 139(10)]

A retiring auditor may be re-appointed at an annual general meeting, if –

- (a) he is not disqualified for re-appointment;

- (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
- (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company [sub-section (10) of Section 139]

Procedure relating to Re-appointment of Retiring Auditor at the Annual General Meeting

1. A company may re-appoint the auditors at the next annual general meeting on the same remuneration or in certain cases with an increase in remuneration. However, before taking steps to re-appoint the same auditor, it must be ascertained from the retiring auditor his willingness to act as an auditor and also a certificate that his re-appointment will be in conformity with the limits specified in the Act should be obtained. Further also ensure that a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be reappointed.
2. After obtaining his eligibility and consent to act as auditor, the Board will consider the same and the subject relating to his appointment and remuneration will be included in the agenda for the annual general meeting.
3. The appointment will be considered at the annual general meeting and the necessary resolution be passed.
4. The auditor must be intimated of his appointment.
5. The company shall inform the Registrar in prescribed form along with requisite fee and necessary annexures.

REMOVAL OF AUDITOR BEFORE EXPIRY OF TERM [SECTION 140(1) AND RULE 7 OF COMPANIES (AUDIT AND AUDITORS) RULES, 2014]

Section 140(1) of the Act provides for removal of auditor before the expiry of his term. The auditor may be removed from his office before expiry of his term only by a special resolution and after obtaining the previous approval of the Central Government.

However, before taking any such action, the auditor concerned shall be given reasonable opportunity of being heard.

In case of a Specified IFSC public and private company, where, within a period of sixty days from the date of submission of the application to the Central Government, no decision is communicated by the Central Government to the company, it would be deemed that the Central Government has approved the application and the company shall appoint new auditor at a general meeting convened within three months from the date of expiry of sixty days period.

Procedure for Obtaining Approval of CG and Passing of Special Resolution (Rule 7)

- (a) An application shall be made to Central Government for removal of auditor shall be made in **Form ADT-2** and shall be accompanied with fees as provided under the Companies (Registration offices and Fees) Rules, 2014.
- (b) The application shall be made within thirty days of the resolution passed by the Board.
- (c) The Company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.
- (d) Intimate the auditor who was removed with a certified copy of the resolution passed along with a copy of the approval of Central Government.
- (e) File MGT-14 with the Registrar with requisite fee and relevant annexures within 30 days of passing special resolution.

RESIGNATION OF AUDITOR [SECTION 140(2) AND 140(3) AND RULE 8]

Section 140(2) of the Act provides that the auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in **Form ADT-3** with the company and the registrar and the CAG (in case of Government company), indicating the reasons and other facts as may be relevant with regard to his resignation.

If the auditor does not comply with the aforesaid provision, he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Procedure for Appointment of Auditor other than Retiring Auditor [Section 140(4)]

- **A Special notice** shall be required for a resolution at an annual general meeting for –
 - (a) appointing as auditor a person other than the retiring auditor; or
 - (b) providing expressly that a retiring auditor shall not be re-appointed except where the retiring auditor has completed a consecutive tenure of five years or ten years as the case may be. (section 139(3))
- On receipt of notice of such a resolution, the company should forthwith send a copy of the same to the retiring auditor.
- Where the notice is received well in advance, the company can conveniently send the notice of the resolution to the members by including the same in the notice of the annual general meeting
- The retiring auditor can make a representation. Where he makes any representation in writing to the company and requests for the notification to members of the company, the company should, unless the representation is received by it too late for it to do so:
 - (a) In any notice of the resolution given to the members state the fact of the representation having been made; and
 - (b) Send a copy of the representation to every member of the company to whom notice of the meeting is sent whether before or after the receipt of the representation by the company.
- Where a copy of the representation is not sent as aforesaid, because they are received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.
- However, if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar. Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then the copy of the representation may not be sent and the representation need not be read out at the meeting.
- Obtain a certificate from the auditor to be so appointed to the effect that such appointment, if made, will be in conformity with the limits specified in the Act.
- In the general meeting, the appointment will be considered and the necessary resolution be passed.

FRAUDULENT ACT BY AUDITOR

Section 140(5) of the Act provides that where the auditors are found guilty of abetting or colluding in any fraud, the tribunal may, by order, direct the company to change its auditors. 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 he shall not function as an auditor and the Central Government may appoint another auditor in his place.

Such an auditor will be removed and be debarred to act as auditor of any company for a period of five years. In such cases, both the firm and the partner concerned will be jointly and severally liable.

As per rule 3 of Companies (Audit and Auditors) Rules, 2014, in case of criminal liability of any audit firm, the liability other than fine, shall devolve only on concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud.

ELIGIBILITY, QUALIFICATION AND DISQUALIFICATION OF AUDITORS

Section 141 of the Companies Act 2013 deals with the eligibility, qualifications and disqualifications of auditors. This section is similar to the existing section 226 of the Companies Act 1956. Under the 1956 Act, a Chartered Accountant holding a certificate of practice or a firm of Chartered Accountants (only) can be appointed as auditor(s) of a company. The section 141 (1) and (2) of the 2013 Act, in addition, provides-

- A firm of Chartered Accountants or Limited Liability Partnership (LLP) can be appointed as an auditor of a company only if majority partners practising in India are qualified for appointment as an auditor of a company.
- Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

Summary – Eligibility

For an individual:

An individual shall be eligible for appointment as an auditor of a company only if he is a chartered accountant (holding certificate of practice under the Chartered Accountants Act, 1949)

For a firm:

A firm shall be eligible for appointment as an auditor of a company only if majority of partners practising in India are qualified for appointment (i.e. they are Chartered Accountants).

Where a firm including a LLP is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

DISQUALIFICATION OF AUDITORS [SECTION 141(3)]

The Companies Act, 2013 has also made addition in the list of disqualifications of auditors. According to the section 141 (3) of the Companies Act, 2013, the following persons shall not be eligible for appointment as an auditor of a company: –

- a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
- b) an officer or employee of the company;
- c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
- d) a person who, or his relative or partner –
 - is 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: Provided that the relative may hold security or interest in the company of face value not exceeding rupees one thousand rupees or such sum as may be prescribed, rule 10 prescribes such amount as Rs. 1 lakh;
 - is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company in excess of rupees five lakh (Rule 10) or

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- has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company for prescribed amount. Rule 10 prescribes the amount as Rs. 1 lakh.
- e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company. The term “business relationship” shall be construed as any transaction entered into for a commercial purpose, except –
 - commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;
 - commercial transactions which are in the ordinary course of business of the company at arm’s length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.
- f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
- g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

In case of private company, one person companies, dormant companies, small companies, and private companies having paid-up share capital less than one hundred crore rupees are excluded from this limit (MCA notification dated 5th June, 2015)
- h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
- i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

DISQUALIFICATION OF AUDITOR AFTER APPOINTMENT

In case of the contravention of the provisions of section 141, the punishment for the company shall be fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees. 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 ten thousand rupees but which may extend to one lakh rupees, or with both.

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. (Section 147)

REMUNERATION OF AUDITOR (SECTION 142)

Remuneration to be fixed in general meeting:

The remuneration of the auditor of a company shall be fixed-

- (a) in its general meeting or
- (b) in such manner as may be determined therein

Remuneration to be fixed by the Board

The Board may fix remuneration of the first auditor appointed by it.

Certain sums to be included in remuneration

The remuneration shall include following in addition to the fees payable to an auditor-

- the expenses, if any, incurred by the auditor in connection with the audit of the company and
- any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

In case of the contravention of the provisions of section 142, the punishment for the company shall be fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees. 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 ten thousand rupees but which may extend to one lakh rupees, or with both.

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. (Section 147)

Powers or Rights of Auditors

Section 143(1) provides for powers or rights of auditors. Auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely: –

- (a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
- (b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
- (c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
- (d) whether loans and advances made by the company have been shown as deposits;
- (e) whether personal expenses have been charged to revenue account;
- (f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:

The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

Duties of Auditors

Section 143(2), 143(3) and 143(4) provides for the duties of auditors. The auditor shall make a report to the members of the company on –

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- (a) the accounts examined by him and
- (b) on every financial statement which are required by or under this Act to be laid before the company in general meeting.

The auditor shall state in his report as to whether the accounts examined by him and financial statements give a true and fair view of –

- (a) the state of the company's affairs as at the end of its financial year;
- (b) the profit or loss for the year; and
- (c) cash flow for the year and such other matters as may be prescribed.

The auditor shall prepare his report after taking into account –

- (a) the provisions of this Act
- (b) the accounting and auditing standards

AUDITOR'S REPORT [SECTION 143(3)]

The auditor's report shall also state –

- (a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
- (b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- (c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
- (d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
- (e) whether, in his opinion, the financial statements comply with the accounting standards;
- (f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- (g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
- (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- (i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

Other matters to be included in auditor's report: The auditor's report shall also include their views and comments on the following matters, namely [Rule 11] :

- a) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
- b) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
- c) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

- d) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.

Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

AUDITING STANDARDS AND NATIONAL FINANCIAL REPORTING AUTHORITY

The Companies Act 2013, provides that every auditor shall comply with the auditing standards. The auditing standards will be prescribed by the Central Government as recommended by the Institute of Chartered Accountants of India (ICAI), 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 (NFRA).

However, until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.

The Central Government may, in consultation with the NFRA, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

SPECIAL PROVISIONS W.R.T. GOVERNMENT COMPANY

In the case of a Government company, the Comptroller and Auditor- General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit the Comptroller and Auditor- General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor- General of India which, among other things, include the directions, if any, issued by the CAG , the action taken thereon and its impact on the accounts and financial statement of the company.

Supplementary Audit

The CAG shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to:

- (a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the CAG may direct; and
- (b) comment upon or supplement such audit report: However, any comments given by the CAG upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 (Right of member to copies of audited financial statement) and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

Test Audit

Sub-Section (7) of Section 143 of the Act provides that the Comptroller and Auditor- General of India may, if he considers necessary, by an order, cause test audit to be conducted of the accounts of any company covered under sub section (5) or sub section (7) of section 139 and the provisions of section 19A of the Comptroller and Auditor- General of India (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

BRANCH AUDIT [SECTION 143(8)]

Audit of a company having branch in India : Where a company has a branch office, the accounts of that office shall be audited either by –

- (a) the auditor appointed for the company (herein referred to as the company's auditor) under this Act; or
- (b) by any other person qualified for appointment as an auditor of the company.

Audit of a company having branch outside India

Where the branch office is situated in a country outside India, the accounts of the branch office shall be audited by –

- (a) the company's auditor or
- (b) by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

Appointment of branch auditor

The branch auditor shall be appointed under section 139.

Duties and powers of the company's auditor prescribed under the Rules (Rule 12)

The duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.

Report of Branch Auditor

The branch auditor shall prepare a report on the accounts of the branch examined by him and submit his report to the company's auditor. The auditor of the company shall deal with the report of the branch auditor, in his report in such manner as he considers necessary.

Fraud reporting by auditors

Section 143(12) read with Rule 13 of the Companies (Audit and Auditors) Rules, 2014 provides that 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.

- The auditor shall report the matter to the Central Government as under:-
 - (a) the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;
 - (b) 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 to the Central Government within fifteen days from the date of receipt of such reply or observations;
 - (c) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 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 has not received any reply or observations;
 - (d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;

(e) the report shall be in the form of a statement as specified in Form ADT-4.

• In case of a fraud involving lesser than rupees one crore, the auditor shall report the matter to Audit Committee constituted under section 177 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:-

- (a) Nature of Fraud with description;
- (b) Approximate amount involved; and
- (c) Parties involved

• 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:-

- (a) Nature of Fraud with description;
- (b) Approximate Amount involved;
- (c) Parties involved, if remedial action not taken; and
- (d) Remedial actions taken.

No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.

The provisions of this section shall mutatis mutandis apply to –

- (a) the cost accountant in practice conducting cost audit under section 148; or
- (b) the company secretary in practice conducting secretarial audit under section 204.

If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (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. [Section 143(15)]

AUDITORS NOT TO RENDER CERTAIN SERVICES (SEC-144)

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, (of the company concerned) but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely,

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;
- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of services as may be prescribed:

This is a new provision and there was no restriction of this type in the Companies Act 1956. Therefore, an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act

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shall comply with the provisions of this section before the closure of the first financial year after the date of commencement of the Act i.e within 31st March 2015.

It is also provided in this section that the prohibited non-audit services cannot be rendered by the following associates of the auditor.

- i) **If the auditor is an Individual :-** The Individual himself or his relative or any person connected or associated with him, or any entity in which the Individual has significant influence or control or whose name or trade mark/brand is used by the Individual.
- ii) **If the auditor is a firm or LLP:-** Such firm/LLP either itself or through its partner or through its parent, subsidiary or associate or through any entity in which the firm/LLP or its partner has significant influence or control or whose name, trade mark or brand is used by the firm/LLP or any of its partners.

AUDITOR(S) TO SIGN AUDIT REPORTS (SEC 145)

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141- namely, that, in the case of an LLP, only the partners who are chartered accountants are authorised to sign on behalf of the firm. The qualifications, observations or comments on financial transactions or 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 (evidently, at or during the meeting)

AUDITOR(S) TO ATTEND GENERAL MEETING

According to section 146 all notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend the meeting either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting and such auditor/authorized representative shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

PENAL PROVISIONS

Section 147 provides for punishment for contravention of the provisions of sections 139 to 146. These penalty provisions are as under.

- If a company contravenes any of the provisions of sections 139 to 146 it shall be liable to pay minimum fine of Rs. 25,000/- which may extend to Rs. five lakh. Further, every officer who is in default shall be punishable with imprisonment upto one year or minimum fine of Rs. 10,000/- which may extend to Rs. one lakh or with both.
- If an auditor of a company contravenes any of the provisions of sections 139, 143 144 or 145, the auditor shall be punishable with minimum fine of Rs. 25,000/- which may extend to Rs. five lakh. or four times the remuneration of the auditor, whichever is less.
- If it is found that the auditor has contravened the provisions of sections 139, 143 144 or 145, knowingly or willfully with the intention to deceive the company, its share holders, creditors or tax authorities, he shall be punishable with imprisonment for a term upto one year and with a minimum fine of Rs. one lakh which may extend upto Rs. 25 lakh.
- If any auditor contravened any of the provisions of sections 139, 143 144 or 145, he shall be liable to-
 - a) refund the remuneration received by him to the company and
 - b) pay for damages to the company, statutory bodies/authorities or to or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report.
- The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring

prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

- Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.
- In case of criminal liability of any audit firm the liability other than fine, shall devolve only on the concerned partners, who acted in a fraudulent manner or abetted or as the case may be, concluded in any fraud. [Rule 9]

COST AUDIT

Section 148 of the Companies Act provides that the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed having an overall turnover from all its product and services of rupees thirty five crore or more during the immediately preceding financial year, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies:

Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

- If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.
- The audit under sub-section (2) shall be conducted by a Cost Accountant who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed : Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records:

Provided further that the auditor conducting the cost audit 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, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

“Cost Audit Report” mean duly signed cost auditor’s report on the cost records examined and cost statements which are prepared as per the Companies (Cost Records and Audit) Rules, 2014.

- An audit conducted under this section shall be in addition to the audit conducted under section 143.
- The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company: Provided that the report on the audit of cost records shall be submitted by the cost accountant in practice to the Board of Directors of the company.
- The cost statements including other statements to be annexed to the cost audit report, shall be approved by the Board of Directors before they are signed on behalf of the Board by any of the director authorised by Board, for submission to the cost auditor to report thereon.
- A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

- If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (6), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.
- If any default is made in complying with the provisions of this section,—
 - (a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;
 - (b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

Cost Auditor

The provisions relating to appointment of cost auditors' appointment are dealt in Companies (Cost Record and Audit) Rules, 2014.

Appointment

The category of companies specified in rule 3 and the thresholds limits laid down in rule 4, shall within one hundred and eighty days of the commencement of every financial year, appoint a cost auditor. "Cost auditor" means a Cost Accountant in practice, as defined in clause (b), who is appointed by the Board [Rule 6].

Remuneration

Rule 14 of Companies (Audit and Auditors) Rules, 2014 deals with Remuneration of the Cost Auditor. For the purpose of sub-section (3) of section 148, –

- (a) in the case of companies which are required to constitute an audit committee-
 - (i) the Board shall appoint an individual, who is a cost accountant or a firm of cost accountants in practice, as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor;
 - (ii) the remuneration recommended by the Audit Committee under (i) shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders;
- (b) in the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant in practice or a firm of cost accountants in practice as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

PROCEDURE FOR APPOINTMENT OF COST AUDITOR (RULE 6)

- (1) The category of companies specified in rule 3 and the thresholds limits laid down in rule 4 of Companies (Cost Records and Audit) Rules, 2014, shall within one hundred and eighty days of the commencement of every financial year, appoint a cost auditor.
- (2) And before such appointment is made, the written consent of the cost auditor to such appointment, and a certificate from him or it, shall be obtained.

The cost auditor appointed shall submit a certificate that:

- (a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Cost and Works Accountants Act, 1959 and the rules or regulations made thereunder;

- (b) the individual or the firm, as the case may be, satisfies the criteria provided in section 141 of the Act, so far as may be applicable;
 - (c) the proposed appointment is within the limits laid down by or under the authority of the Act; and
 - (d) the list of proceedings against the cost 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.
- (3) The audit committee, if constituted by the company shall ensure that the cost auditor is free from any disqualifications.
 - (4) The audit committee shall obtain a certificate from the cost auditor certifying his independence.
 - (5) Every company referred to in sub-rule (1) shall inform the cost auditor concerned of his or its appointment as such and file a notice of such appointment with the Central Government within a period of thirty days of the Board meeting in which such appointment is made or within a period of one hundred and eighty days of the commencement of the financial year, whichever is earlier, through electronic mode, in **Form CRA-2**, along with the fee as specified in Companies (Registration Offices and Fees) Rules, 2014.
 - (6) On filing the application, the same shall be deemed to be approved by the Central Government, unless contrary is heard within 30 days from the date of filing of such application.
 - (7) If within thirty days from the date of filing of such application, the Central Government directs the company to re-submit the said application with additional information the period of thirty days for deemed approval of the Central Government shall be counted from the date of re-submission by the company.
 - (8) After the expiry of thirty days, the company shall issue formal letter of appointment to the cost auditor.
 - (9) The audit committee, if constituted by the company recommends to the Board a suitable remuneration to be paid to the cost auditor. In the case of those companies which are not required to constitute an audit committee, the Board shall consider and approve the remuneration of the Cost Auditor which shall be ratified by shareholders subsequently.
 - (10) Every cost auditor appointed as such shall continue in such capacity till the expiry of one hundred and eighty days from the closure of the financial year or till he submits the cost audit report, for the financial year for which he has been appointed.
 - (11) The cost auditor appointed under these rules may be removed from his office before the expiry of his term, through a board resolution after giving a reasonable opportunity of being heard to the Cost Auditor and recording the reasons for such removal in writing.

Further, the Form CRA-2 to be filed with the Central Government for intimating appointment of another cost auditor shall enclose the relevant Board Resolution to the effect. Furthermore, nothing contained in these Rules shall prejudice the right of the cost auditor to resign from such office of the company.

- (12) 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 suggestions, if any, in **Form CRA-3**.
- (13) Every cost auditor shall forward his duly signed report to the Board of Directors of the company within a period of one hundred and eighty days from the closure of the financial year to which the report relates and the Board of directors shall consider and examine such report, particularly any reservation or qualification contained therein.
- (14) Every company covered under these rules shall, within a period of thirty days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report alongwith full information and explanation on every reservation or qualification contained therein, in **Form CRA-4** in Extensible Business Reporting Language format in the manner as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014.

- (15) The company shall disclose full particulars of the cost auditor, along with the due date and actual date of filing of the cost audit report by the cost auditor, in its Annual Report for each relevant financial year.
- (16) In those companies, where constitution of Audit Committee is not required by law, then the role of Audit Committee shall be discharged by the Board of Directors.
- (17) The provisions of sub-section (12) of section 143 of the Act and the relevant rules made thereunder shall apply mutatis mutandis to a cost auditor during performance of his functions under section 148 of the Act and these rules.

Casual vacancy

Any casual vacancy in the office of a cost auditor, whether due to resignation, death or removal, shall be filled by Board of Director within thirty days of occurrence of such vacancy and the company shall inform the Central Government in Form CRA-2 within thirty days of such appointment.

Companies (Auditor's Report) Order, 2015

Section 143(11) of the Companies Act, 2013, provides that "the Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein." The requirement of this section is similar to Section 227(4A) of the Companies Act, 1956 which required that the auditor's report of certain class of companies should include a statement on certain prescribed matters. These reporting requirements were prescribed under the Companies (Auditor's Report) Order, 2015. Section 227(4A) of the 1956 Act ceased to be operational from 1st April 2014 after notification of section 143(11) under the Companies Act, 2013.

In order to specify the matters to be included in the auditor's report and in exercise of the powers conferred by sub-section (11) of section 143 of the Companies Act, 2013 and in supersession of the Companies (Auditor's Report) Order, 2015, the Central Government, after consultation with the Committee constituted under proviso to section 143(11) issued Companies (Auditor's Report) Order, 2016 on 29th March, 2016. It shall come into force on the date of its publication in the Official Gazette.

Applicability

Every report made by the auditor under section 143 of the Companies Act for the financial year commencing on or after 1st April, 2015 will be made according to the Companies (Auditor's Report) Order, 2016.

Every report made by the auditor under section 143 of the Companies Act for the financial year commencing on or after 1st April 2015 will be made according to the Companies (Auditor's Report) Order, 2016

It shall apply to every company including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) [hereinafter referred to as the Companies Act], except—

- (i) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (ii) an insurance company as defined under the Insurance Act, 1938 (4 of 1938);
- (iii) a company licensed to operate under section 8 of the Companies Act;
- (iv) a One Person Company as defined under clause (62) of section 2 of the Companies Act and a small company as defined under clause (85) of section 2 of the Companies Act; and
- (v) a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus not more than rupees one crore as on the balance sheet date and which does not have total borrowings exceeding rupees one crore from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Scheduled III to the

Companies Act, 2013 (including revenue from discontinuing operations) exceeding rupees ten crore during the financial year as per the financial statements.

Matters to be included in the Auditor's Report

The auditor's report on the accounts of a company to which this Order applies shall include a statement on the following matters, namely:-

- (i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;
 - (b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;
 - (c) whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof;
- (ii) whether physical verification of inventory has been conducted at reasonable intervals by the management and whether any material discrepancies were noticed and if so, whether they have been properly dealt with in the books of account;
- (iii) whether the company has granted any loans, secured or unsecured to companies, firms, Limited Liability Partnerships or other parties covered in the register maintained under section 189 of the Companies Act, 2013. If so,
 - (a) whether the terms and conditions of the grant of such loans are not prejudicial to the company's interest;
 - (b) whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular;
 - (c) if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery of the principal and interest;
- (iv) in respect of loans, investments, guarantees, and security whether provisions of section 185 and 186 of the Companies Act, 2013 have been complied with. If not, provide the details thereof.
- (v) in case, the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act, 2013 and the rules framed thereunder, where applicable, have been complied with? If not, the nature of such contraventions be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not?
- (vi) whether maintenance of cost records has been specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013 and whether such accounts and records have been so made and maintained.
- (vii)(a) whether the company is regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated; (b) where dues of income tax or sales tax or service tax or duty of customs or duty of excise or value added tax have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not be treated as a dispute).

- (viii) whether the company has defaulted in repayment of loans or borrowing to a financial institution, bank, Government or dues to debenture holders? If yes, the period and the amount of default to be reported (in case of defaults to banks, financial institutions, and Government, lender wise details to be provided).
- (ix) whether moneys raised by way of initial public offer or further public offer (including debt instruments) and term loans were applied for the purposes for which those are raised. If not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported;
- (x) whether any fraud by the company or any fraud on the Company by its officers or employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated;
- (xi) whether managerial remuneration has been paid or provided in accordance with the requisite approvals mandated by the provisions of section 197 read with Schedule V to the Companies Act? If not, state the amount involved and steps taken by the company for securing refund of the same;
- (xii) whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1: 20 to meet out the liability and whether the Nidhi Company is maintaining ten per cent unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability;
- (xiii) whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act, 2013 where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards;
- (xiv) whether the company has made any preferential allotment or private placement of shares or fully or partly convertible debentures during the year under review and if so, as to whether the requirement of section 42 of the Companies Act, 2013 have been complied with and the amount raised have been used for the purposes for which the funds were raised. If not, provide the details in respect of the amount involved and nature of non-compliance;
- (xv) whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act, 2013 have been complied with;
- (xvi) whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 and if so, whether the registration has been obtained.

Reasons to be stated for unfavourable or qualified answers.

- (1) Where, in the auditor's report, the answer to any of the questions is unfavourable or qualified, the auditor's report shall also state the basis for such unfavourable or qualified answer, as the case may be.
- (2) Where the auditor is unable to express any opinion on any specified matter, his report shall indicate such fact together with the reasons as to why it is not possible for him to give his opinion on the same.

SECRETARIAL AUDIT (SECTION 204)

The Companies Act, 2013 has introduced a new requirement of Secretarial Audit for bigger companies, which has been prescribed under Section 204 of the Act. The provisions regarding secretarial audit of the company according to section 204 of the Companies Act, 2013 and the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 are discussed below-

Companies required conducting secretarial audit:

- 1) Every listed company and
- 2) Company belonging to other class of companies: The other class of companies are
 - every public company having a paid-up share capital of fifty crore rupees or more; or

- every public company having a turnover of two hundred fifty crore rupees or more.

Qualifications for the secretarial auditor: A Secretarial Audit has to be conducted by a Practising Company Secretary in respect of the secretarial and other records of the company.

Report of the secretarial audit: A secretarial audit report shall be annexed with the Board's report of the company. 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 sub-section (1). The format of the Secretarial Audit Report shall be in Form No.MR.3.

Other Provisions:

- 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.
- If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, 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. As per Section 143(14), all provisions regarding rights, duties and obligations of statutory auditors shall also apply to Company Secretary in Practice conducting secretarial audit.

For more details, one may refer to the Guidance Note on Secretarial Audit as issued by ICSI.

ANNEXURES

SPECIMEN OF BOARD RESOLUTION FOR THE APPOINTMENT OF FIRST AUDITOR

“RESOLVED THAT the consent of the Board of directors be and is hereby given to the appointment of M/s ABC and Co., Chartered Accountants, as the Auditor of the Company to hold office up to the conclusion of the First Annual General Meeting of the company at a remuneration of ` in addition to the out of pocket expenses incurred by them in connection with audit of company accounts.”

RESOLVED FURTHER THAT the Secretary of the company be and is hereby directed to give intimation of the appointment to the Auditors so appointed within seven days of the date of this resolution.”

SPECIMEN OF ORDINARY RESOLUTION PASSED AT A GENERAL MEETING APPOINTING THE FIRST AUDITOR(S) WHERE BOARD FAILS TO APPOINT WITHIN THIRTY DAYS OF OF COMPANY'S REGISTRATION

“RESOLVED THAT pursuant to provisos to Sub-section (6) of Section 139 of the Companies Act, 2013, Shri....., Chartered Accountant,, be and is hereby appointed as the auditor of the company to hold office until the conclusion of the first Annual General Meeting on a remuneration of ` plus reimbursement of out-of-pocket expenses that may be incurred by the auditor in the performance of his duties as auditor of the company.

Explanatory Statement

The company was registered on..... The Board of directors of the company failed to exercise its power under Sub-section (6) of Section 139 of the Companies Act, 2013 within thirty days of the date of registration of the company and did not appoint the first auditor of the company.

Therefore, in exercise of its power under the proviso to Sub-section (6) of Section 139 of the Act, the company may appoint the first auditor of the company by passing the proposed ordinary resolution as set out in the notice of the meeting.

None of the directors of the company is concerned or interested in the proposed resolution.

SPECIMEN OF ORDINARY RESOLUTION APPOINTING AUDITOR(S) OF THE COMPANY AT AN AGM

“RESOLVED THAT pursuant to Sub-section (1) of Section 139 of the Companies Act, 2013, M/s. Chartered Accountants,, New Delhi, be and are hereby appointed as the auditors of the company to hold office from the conclusion of this annual general meeting until the conclusion of next annual general meeting of the company to audit the financial accounts of the company for the financial year ended on a remuneration of ` (Rupees.....) and reimbursement of actual expenses that may be incurred by the auditors in the performance of their duty as auditors of the company.”

SPECIMEN OF ORDINARY RESOLUTION APPOINTING AUDITOR OF THE COMPANY TO FILL VACANCY CAUSED BY RESIGNATION

“RESOLVED THAT, pursuant to proviso to Sub-section (8) of Section 139 of the Companies Act, 2013, M/s..... Chartered Accountants, New Delhi, be and are hereby appointed as the auditors of the company to fill the vacancy caused by the resignation of M/s..... Chartered Accountants,, New Delhi, present auditors of the company, to hold the office from the date of this meeting until the conclusion of the next annual general meeting of the company on a remuneration of..... plus reimbursement of out-of-pocket expenses that may be incurred by the auditors in the performance of their duties as auditors of the company.”

Explanatory Statement

M/s., the existing auditors have submitted their letter of resignation, citing personal reasons. Proviso to Section 139 (8) of the Companies Act, 2013, lays down that where vacancy in the office of an auditor is caused by the resignation of the existing auditor, the vacancy shall be filled by the Board of Directors and the appointment made by the Board shall be approved in a general meeting within 3 months of the recommendation of the Board.

The letter of resignation of M/s....., may be inspected at the registered office of the company at..... during the business hours on any working day.

None of the directors is interested or concerned in the proposed resolution.

**BOARD RESOLUTION FOR APPOINTMENT OF AUDITOR
TO FILL CASUAL VACANCY**

“RESOLVED THAT consequent to the casual vacancy caused by the sudden death ofChartered Accountants and existing auditors of the company, M/s., Chartered Accountants, be and are hereby appointed as Auditors of the Company to fill the casual vacancy and they shall hold office until the conclusion of the next annual general meeting and they be remunerated by way of such fee as the Directors may determine.

**BOARD RESOLUTION REGARDING REMOVAL OF AUDITOR
AND OTHER INCIDENTAL MATTERS**

The Board resolves that: in accordance with section 140(1) of the Companies Act, 2013 read with rule 7 of Companies (Audit and auditors) Rules, 2014 and subject to the approval of the Company at a general meeting,, Chartered Accountant, the Auditor of the Company be removed from his office as auditor ;

RESOLVED FURTHER THAT an extraordinary general meeting of the Company be held on at at to transact the business as set out in the draft notice of the meeting tabled at this meeting which, together with the explanatory statement to be annexed thereto, are approved;

RESOLVED FURTHER THAT Shri, Secretary of the Company is authorised to issue the notice of the extraordinary general meeting to the members of the Company;

RESOLVED FURTHER THAT Shri, Secretary of the Company is authorised to inform the Auditor of the decision of the Board as required under the Act;

RESOLVED FURTHER THAT Shri....., Secretary of the Company is authorised to digitally sign e-form ADT-2 for make an application to the Central Government for approval for the removal of the Auditor under section 140 of the Act.

RESOLUTION AT A GENERAL MEETING TO REMOVE AUDITOR

RESOLVED THAT pursuant to section 140 of the Companies Act, 2013 and in accordance with the approval accorded the Central Government vide letter No.dt.M/s....., Chartered Accountants who were appointed at the last Annual General Meeting held on as auditors of the company be and are hereby removed from the office of the Auditors of the company.

**MODEL RESOLUTION TO BE PASSED AT AN ANNUAL GENERAL MEETING
TO APPOINT BRANCH AUDITOR**

“RESOLVED THAT in accordance with section 143 (8) of the Companies Act, 2013 M/s., Chartered Accountant/s, who are qualified for appointment as Auditor of the Company under section 139 of the Companies Act, 2013 be and are hereby appointed as Branch Auditor to audit the accounts for the year ending 31st March, 2014 of the Company’s branch office/s at on a remuneration of `, besides reimbursement of out of pocket expenses actually incurred by them in the performance of their duties as branch auditor.

**MODEL RESOLUTION TO BE PASSED AT AN ANNUAL GENERAL MEETING TO AUTHORISE BOARD OF
DIRECTORS TO APPOINT BRANCH AUDITOR**

“RESOLVED THAT pursuant to section 143(8) of the Companies Act, 2013, the accounts for the year ending 31st March, 2014 of the Company’s branch office/s at be audited by such person/s, other than the Company’s Auditor, as is/are qualified for appointment as Auditor of the Company under section 139 of the Companies Act, 2013, and the Board of Directors be and is hereby authorised to appoint such Branch Auditor/s in consultation with the Company’s Auditor and on such terms and conditions and on such remuneration as may be fixed by the Board.

MODEL BOARD RESOLUTION TO APPOINT BRANCH AUDITOR AND FIX HIS REMUNERATION

“RESOLVED THAT pursuant to section 143(8) of the Companies Act, 2013 and the power conferred on the Board by the Company by an ordinary resolution passed at the annual general meeting held on....., M/s, Chartered Accountant/s, who is/are qualified under section 139 of the Companies Act, 2013, be and is/are hereby appointed as the Branch Auditor to audit the accounts for the year ending 31st March, 2014 of the Company’s branch office situated at....., and they shall hold office from the date of this meeting till the conclusion of the next annual general meeting of the Company, and that the said Branch Auditor be paid the remuneration of `, besides travelling, lodging, boarding and out of pocket expenses incurred by him in connection with his audit work.”

**MODEL BOARD RESOLUTION TO APPOINT COST AUDITOR
AND FIX HIS REMUNERATION**

“RESOLVED THAT pursuant to the provisions of the Companies (Cost Records and audit) Rules, 2014, M/s., be and are hereby appointed as Cost Auditor of the Company subject to ratification by the shareholders of the Company, for the year 2014-15, to carry out the Cost Audit and issue Compliance Report in the prescribed form regarding the compliance by the Company of all the provisions of The companies (Cost records and audit) Rules, 2014 and Mr., Director, Mr., Director of the Company be and is hereby authorized severally to negotiate and finalize the remuneration payable to M/s in consultation with the said appointment”

LESSON ROUND-UP

- According to section 139(1) every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be prescribed by the Rules.
- In accordance with section 142(1) the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein: Provided that the Board may fix remuneration of the first auditor appointed by it. The remuneration under sub-section (1) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.
- The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which are required to be laid before the company in general meeting .
- Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company’s auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139.

SELF TEST QUESTIONS

1. Explain the procedure for appointment of first auditors of a company.
2. Draft a resolution for the appointment of Auditors of the company at AGM.
3. Discuss the manner and procedure for rotation of Auditor.
4. What are the powers and duties of the auditors provided by the Companies Act 2013?
5. Write down the procedure to appoint the Cost Auditor of a Company.

Lesson 12

Preparation and Presentation of Reports

LESSON OUTLINE

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LEARNING OBJECTIVES

It is mandatory for the Board of Directors of every company to present financial statement (annual report) to the shareholders along with its report i.e. Board's Report. Financial statement prepared, presented and filed annually is the most important means of communication by the Board of Directors of a company with its shareholders. Companies Act provides for the contents and disclosures required to be given in the financial statement. It also provides the detailed procedure of presenting the financial statement at the meeting of the shareholders and filing of these documents with Registrar of Companies. The contents of these documents have already been covered in the study of Company Law of the Executive Programme.

This lesson deals with the procedure for preparing and placing the financial statement at the Shareholders meeting.

INTRODUCTION

In case of a company, there exists a divorce between the shareholders (contributors of capital) and the management of a company. The Board of Directors manage the affairs of a company. Mandatory disclosure through financial statement including auditor's report and Board's report is a method of providing information to the shareholders and the public about the financial position and activities of the company so as to enable its members to exercise a more intelligent and purposeful control thereon.

The term "financial statement" in relation to a company, includes:

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

The financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

FINANCIAL STATEMENT

For understanding the procedure for preparation and finalization of financial statement, its approval by the board, its submission to the auditor for their report and then laying before the general meeting, we need to have a fair knowledge of the provisions of the Companies Act, 2013 and rules made thereunder.

Accordingly, the provisions, in brief, are detailed below.

Preparation of the Books of accounts

Section 128(1) of the Companies Act, 2013 requires every company to prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any.

The books shall be kept on accrual basis and according to the double entry system of accounting.

The books of account aforesaid and other relevant papers may be kept at any other place in India as may be decided by the Board of Directors. The notice regarding address at which books of account may be kept is required to be filed in Form AOC-5 with the Registrar.

Rule 3 of Companies (Accounts) Rules, 2014 allows and provides the manner for keeping books of account in electronic mode.

It provides that the information in the electronic record of the document shall be capable of being displayed in a legible form. 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.

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.

Section 129 (1) requires that the financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:

Rule 4A of Companies (Accounts) Rules, 2014 provides that the financial statements shall be in the form specified in Schedule III to the Act and comply with Accounting Standards or Indian Accounting Standards as applicable.

The items contained in the financial statements shall be prepared in accordance with the definitions and other requirements specified in the Accounting Standards or the Indian Accounting Standards as the case may be.

The items contained in such financial statements shall be in accordance with the accounting standards.

Section 129(1) is not applicable to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.

Under Section 129(2) provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

Consolidation of financial statement

In case, a company has one or more subsidiaries, it shall, in addition to its financial statement, prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own.

This consolidated financial statement shall also be laid before the annual general meeting of the company along with the laying of its financial statement.

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 subsidiaries in Form AOC-1. (Rule 5 of Companies (Accounts) Rules, 2014).

Rule 6 of Companies (Accounts) Rules, 2014 provides the manner of consolidation of accounts. According to this, 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.

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 subsidiaries and associate company or companies in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed

However, nothing in Rule 6 shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:-

- (i) 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;
- (ii) 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
- (iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.

According to Section 129(4) the provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements referred to in sub-section (3)

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In case, the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

MCA exercising the power conferred by section 129 (6) of the Companies Act, 2013, in public interest exempted the government companies producing Defence Equipment including Space Research from providing additional information required through para 5(ii)(a)(1), 5 (ii) (a) (2), s (ii) (e),5(iii) ,5 (viii)(a),5 (viii) (b), 5 (viii) (c) and 5 (viii) of the General instructions for preparation of Statement of Profit and Loss in Schedule III of the Companies Act, 2013.

Right of member to copies of financial statement

Section 136(1) provides that a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting. (*For specimen board resolution for preparation of annual report in abridged form for mailing to members, please see Annexure I at the end of this Study*)

In the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, 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 twenty-one days before the date of the meeting unless the shareholders ask for full financial statements.

According to Rule 10 of Companies (Accounts) Rules, 2014, the Statement containing salient features of financial statements shall be in Form AOC-3 i.e. Form of Abridged Financial Statements.

The Central Government may prescribe the manner of circulation of financial statements of Listed companies and public companies having net worth of more than one crore rupees and turnover of more than ten crore rupees.

Rule 11 provides that in case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent-

- (a) by electronic mode to such members whose shareholding is in dematerialised format and whose email Ids are registered with Depository for communication purposes;
- (b) where Shareholding is held otherwise than by dematerialised format, to such members who have positively consented in writing for receiving by electronic mode; and
- (c) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

A listed company shall also place its financial statements including consolidated financial statements, if any, on its website, which is maintained by or on behalf of the company.

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.

In case of Nidhis, subsection(1) of section 136 shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one percent 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 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. (By MCA Notification dated 5th June, 2015 for providing exemption to Nidhi Companies)

Filing of financial statement

Section 137 requires a copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in Form AOC-4/ AOC-4 CFS (consolidated financial statement)

The class of companies as may be notified by the Central Government from time to time , shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format and the Central Government may specify the manner of such filing under such notification for such class of companies. (Rule 12 of companies (Accounts) Rules, 2014)

In case, the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

Financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403:

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.

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

In case, the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held.

Preservation of Books of account

Section 128(5) provides that the books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period

less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order.

Where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

PROCEDURE FOR PREPARATION, FINALISATION OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

1. At the close of the financial year of the company, the company should prepare Profit and Loss Account (Income and Expenditure Account for non-profit making company), and Balance Sheet as at the close of the financial year. It should be ensured that the annual accounts are being prepared in accordance with the Schedule III to the Companies Act, 2013.
2. The basic/primary accounts are to be kept and maintained at the Registered Office of the Company. However, they can be kept and maintained at a place other than the Registered Office of the company. All or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. The company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

For this purpose –

- (i) Call a Board meeting by giving notice in writing to all the directors.
 - (ii) Hold a meeting of the Board and pass a resolution for keeping accounts at a place other than the registered office.
(For specimen resolution, please see Annexure II at the end of this Study).
 - (iii) File the notice regarding address at which books of account may be kept to the Registrar in Form AOC- 5
3. The Accounts are to be prepared on a going concern basis and on accrual basis by following all the applicable accounting standards and proper and sufficient care should be taken in maintenance of adequate accounting records in pursuance of the provisions of the Act.
 4. Every balance sheet and profit and loss account shall give a true and fair view of the state of affairs/ profit or loss for the financial year of the company at the end of financial year and shall be in the form set out in Part I and Part II of Schedule III of the Act respectively and shall be in accordance with the accounting standards.
 5. Internal audit and statutory audit of the accounts is a continuous process. Hence, the annual accounts so prepared and finalised should be duly audited.
 6. After the annual accounts have been audited, these are required to be approved by the Board of Directors:
 - (i) For this purpose, call a Board meeting by giving a notice in writing to all the directors.
 - (ii) If the company is listed, notice of such Board meeting should also be sent to the stock exchanges where the company's securities are listed. (Regulation 29). This intimation shall be given at least five days in advance. Such intimation is required to be uploaded at website of the company. [Regulation 30(8)]
 - (iii) At the Board Meeting, first of all the draft annual accounts shall be approved by the Board of Directors.
(For specimen resolution, please see Annexure III at the end of this Study).

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 at least 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 and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

- (iv) Such approved annual audited accounts together with Directors' report, Auditor's Report, and notice of meeting will be sent to the members, directors, auditors of the company and others entitled as provided in the Act.
 - (v) The annual accounts and reports are to be laid before the annual general meeting of the members of the company for their adoption. For the purpose, the maximum period prescribed is six months from the date of closing of the relevant financial year, in case of subsequent annual general meetings.
7. A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting.
 8. Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held.
 9. If the company belongs to notified category by the Central Government, the company shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format in the manner provided in Rule 12 of companies (Accounts) Rules, 2014.

Note:-The requirement of preparation of balance sheet and profit and loss account as per Schedule III is not applicable to insurance company or banking company or electricity company or other class of company for which a separate form is specified under the respective Acts governing them.

10. In case the books of account are maintained in electronic form, then as per Rule 3 of Companies (Accounts) Rules, 2014, the company shall intimate to the Registrar on an annual basis at the time of filing of financial statement--
 - (a) The name of the service provider;
 - (b) The internet protocol address of service provider;
 - (c) The location of the service provider (wherever applicable);
 - (d) Where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL'S ORDERS

According to Section 130(1)*, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that –

- (i) the relevant earlier accounts were prepared in a fraudulent manner; or
- (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

* Come into force w.e.f. 1st June, 2016 MCA vide Notification No. S.O. 1934(E) dated 1st June, 2016.

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The Court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

The accounts so revised or re-cast under sub-section (1) of section 130 shall be final.

Voluntary revision of Financial Statements or Board's Report

As per Section 131(1)*, if it appears to the directors of a company that –

- (a) the financial statement of the company; or
- (b) the report of the Board, do not comply with the provisions of section 129 or section 134

they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

The Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section.

Such revised financial statement or report shall not be prepared or filed more than once in a financial year. The detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

Auditor's Report

Under section 143(2), it is the duty of the auditor to make a report to the members of the company on the accounts examined by him, and on every financial statements which are required to be laid before the company in general meeting. The report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report or under any order made and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters may be prescribed.

The report, according to Section 143(3) besides other things necessary in any particular case, must expressly state:

- (a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
- (b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- (c) whether the report on the accounts of any branch office of the company audited under sub-section (8) of section 143 by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
- (d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
- (e) whether, in his opinion, the financial statements comply with the accounting standards;

* Come into force w.e.f. 1st June, 2016, MCA vide Notification No. SO 1934(E) dated 1st June, 2016.

- (f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- (g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
- (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- (i) whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;
- (j) such other matters as may be prescribed.

According to Rule 11 of the Companies (Audit and Auditors) Rules, 2014, the auditor's report shall also include their views and comments on the following matters, namely:-

- (a) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
- (b) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
- (c) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

Section 143(4) states that where any of the above matters is answered in the negative or with a qualification, the auditors' report must state the reason for the answer.

Section 143(5) states that in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Government, or partly by the Central Government and partly by one or more State Government, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

Auditor to sign audit report, etc.

According to section 145 of the Companies Act, 2013, the person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the report shall be read before the company mentioned in general meeting and shall be open to inspection by any member of the Company.

Section 141(2) provides that where a firm including a limited liability partnership is appointed as a auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.

NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA)

Section 132 lays down the framework for constitution of NFRA. The Central Government, by notification shall constitute the NFRA, to provide for matters relating to accounting and auditing standards under this Act.

Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall –

- (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

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- (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed: Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed: Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment: Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall –

- (a) have the power to investigate, either suo motu or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949: Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;
- (b) have 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: –
 - (i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
 - (ii) summoning and enforcing the attendance of persons and examining them on oath;
 - (iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
 - (iv) issuing commissions for examination of witnesses or documents; (c) where professional or other misconduct is proved, have the power to make order for –
 - (A) imposing penalty of –
 - (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
 - (II) not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms;
 - (B) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (c) of sub-section (4), may prefer an appeal before the Appellate Authority in such manner and on payment of such fees as may be prescribed.

The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.

BOARD'S REPORT

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 –

- (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;
- (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.
- (d) a statement on declaration given by independent directors under sub-section (6) of section 149;
- (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;

In case of Government companies, section 134(3)(e) shall not apply.

- (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made –
 - (i) by the auditor in his report; and
 - (ii) by the company secretary in practice in his secretarial audit report;
- (g) particulars of loans, guarantees or investments under section 186;
- (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;

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- (i) the state of the company's affairs;
- (j) the amounts, if any, which it proposes to carry to any reserves;
- (k) the amount, if any, which it recommends should be paid by way of dividend;
- (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
- (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
- (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
- (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
- (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made;
- (q) such other matters as may be prescribed.

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 (o) 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]

9(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.

As per **Rule 8 of Companies (Accounts) Rules, 2014** provides the following matters to be included in the Board's report:

- (1) The Board's Report shall be prepared based on the stand alone financial statements of the company and 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 under report.
- (2) The Report of the Board shall contain in the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2

Further Rule 8(3) of Companies (Accounts) Rules 2014 provides that the report of the Board shall contain the following information and details, namely:-

(A) Conservation of energy –

- (i) the steps taken or impact on conservation of energy;
- (ii) the steps taken by the company for utilising alternate sources of energy;
- (iii) the capital investment on energy conservation equipments;

(B) Technology absorption –

- (i) the efforts made towards technology absorption;
- (ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
- (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year) –
 - (a) the details of technology imported;

- (b) the year of import;
- (c) whether the technology been fully absorbed;
- (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and
- (iv) the expenditure incurred on Research and Development.

(C) Foreign exchange earnings and Outgo – The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

Provided that the requirement of furnishing Information and details under this sub-rule shall not apply to a Government Company engaged in producing defence equipment.

According to **Rule 8(5) of Companies (Accounts) Rules 2014**, in addition to the information and details specified in sub-rule (4), the report of the Board shall also contain: -

- (i) the financial summary or highlights;
- (ii) the change in the nature of business, if any;
- (iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;
- (iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
- (v) the details relating to deposits, covered under Chapter V of the Act,-
 - (a) accepted during the year;
 - (b) remained unpaid or unclaimed as at the end of the year;
 - (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-
 - (i) at the beginning of the year;
 - (ii) maximum during the year;
 - (iii) at the end of the year;
 - (vi) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;
 - (vii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;
 - (viii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

Directors' Responsibility Statement [Section 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.

Board's report in case of one person company

As per section 134(4), the report of the Board of Directors to be attached to the financial statement shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

Signing of Board's Report

As per section 134(6), the Board's report and any annexures thereto shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

As per section 134(7), a signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

- (a) any notes annexed to or forming part of such financial statement;
- (b) the auditor's report; and
- (c) the Board's report referred to in sub-section (3).

Punishment provisions

As per section 134(8), if a company contravenes the provisions of section 134, the company shall be punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 25 lakh 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 Rs. 50,000 but which may extend to Rs. 5 lakh or with both.

Performance 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 has been made by the Board of its own performance and that of its committees and individual directors.

Schedule IV to the Companies Act provides on Evaluation mechanism as under:

1. The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.
2. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Nomination and Remuneration Committee

Section 178 (2) provides that 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 carry out evaluation of every director's performance.

Section 178 shall not apply to specific IFSC public company. Section 178(2) shall not apply to a Government company.

Point need to know:-

Annual Report of a listed company shall also contain a declaration to the effect that all Board members and senior management personnel have affirmed compliance with the code of conduct laid down for them. Such declaration shall be signed by the CEO of the company.

Note for Students: Lesson 15 and lesson 16 of study on Company Law of Executive Programme covers the provisions relating to Independent Directors and other committees in detail.

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. (*Annexure IV*)

In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.

Compliance certificate and quarterly compliance report on corporate governance under SEBI Listing Regulations, 2015

As per Regulation 17(8), the chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II. (*Annexure V*)

As per Regulation 27(2) with regard to other Corporate Governance of Listing Obligation, 2015

- I. 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 recognised stock exchange(s) within fifteen days from close of the quarter. Vide Circular CIR/CFD/CMD/5/2015 dated 24th September, 2015 SEBI has specified three formats as under : [*Annexure VI(A), (B), (C)*]
 - I. Format to submitted by listed entity on quarterly basis
 - II. Format to be submitted by listed entity at the end of Financial Year (for the whole of FY)
 - III. Format to be submitted by listed entity at the end of six months after end of Financial Year along with second quarter report of next Financial Year.
- II. Details of all material transactions with related parties shall be disclosed along with the report.
- III. The report shall be signed either by the compliance officer or the chief executive officer of the listed entity.

REPORT ON ANNUAL GENERAL MEETING

As per section 121 read with rule 31 of Companies (Management of Administration) Rules, 2015.

Every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.

This Report shall be in **Form MGT-15** and shall be filed with the Registrar within 30 days of the conclusion of the AGM with the prescribed fees. The main contents of **Form MGT-15** are as follows:

- Details of the meeting;
 - Date and day of the annual general meeting;

- Start time and end time of AGM,
 - Venue of the annual general meeting;
 - Whether chairman of the meeting appointed;
 - Number of members attending the meeting;
 - Whether the requisite quorum is present;
 - Business transacted at the meeting and result thereof;
 - Particulars with respect to any adjournment of meeting and change in venue;
 - Particulars with respect of postponement of meeting and change in venue;
 - Any other points relevant for inclusion in the Report; and
- Fair summary of proceedings of the meeting.
 - Confirmed that the meeting was called, convened, held and conducted as per the provisions of the Act, the rules and secretarial standards made thereunder.

This report is required to be signed by the Chairman of the meeting. In case of inability of chairman to sign, by any two directors of the company, one of whom shall be managing director, if there is one and company secretary of the company.

There is no statutory provision under which chairperson of an annual general meeting must make a speech or statement at the meeting. However, the chairperson has to explain the working of the company during the year and current year before proposing resolution relating to adoption of the statement of audited accounts and the reports of the Directors and Auditors. A convention has also, developed that the chairperson of annual general meetings makes a statement or give a speech which is a personal message or address to the shareholders being family members of the company. Some companies also arrange for publication of chairperson's statement in various newspapers and/or financial magazines.

CHAIRPERSON'S SPEECH

Chairperson's speech is usually utilised for a wide-ranging review of the company's progress.

General pointers for preparing a speech for the Chairperson

In addition to the matters relating to the working results of the company for the previous year and current year covered by the Directors' Report, the speech should mention about the following points *vis-a-vis* nature of the business of the company engaged in:

- (a) general political position in the country;
- (b) general economic position in the country;
- (c) status of the industry in which the company is engaged;
- (d) government policy relating to the industry in which the company is engaged; import and export; fiscal, banking and financial location, etc.
- (e) financial position of the company and arrangements with institutions/Banks;
- (f) relations with the employees and workers of the company;
- (g) company's position for and against competitors and its strategy to face the challenges;
- (h) company's research and development activities;
- (i) company's action towards its commitments to the community/society in which it is operating and the steps taken thereof;

- (j) company's commitment towards its employees, consumers, creditors, distributors and all other concerned and actions taken for improvement thereof.

In general it should give relevant information which amounts to be special to the shareholders of the company since the Chairperson has the opportunity to interact with the shareholders directly only once a year. (*chairperson's speech, Annexure VII*).

PROCEDURE FOR PREPARATION OF BOARD'S REPORT

1. Section 136(1) of the Companies Act, 2013 provides that every company, public or private shall forward to its member along with its annual financial statements, the Board's report. The Board's report is an important document in which the Board gives a complete review of the performance of the company during the year under review and other information as explained below.
2. The Board's report shall be prepared based on the stand alone financial statements of the company and the report shall contain a separate section wherein report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.
3. Board's Report and the financial statement shall be approved in Board Meeting only. These matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.

(For specimen resolution, please see Annexure VIII at the end of this study)

4. Section 92(3) requires that the extract of the Annual Return as prescribed in the Form MGT-9 shall form part of the Board's Report. Therefore, for preparation of extract, it is required to prepare Annual Return for the previous financial year as per details given in Section 92 of the Act.
5. Section 134(3) read with rule 8(3) lists down various items to be included in the Board's Report as already detailed in the chapter.
6. Where it is proposed to pay dividend on equity or preference shares, the Board's Report shall contain the recommendation of the Board as to the rate of dividend for the year under review for the approval of members at the annual general meeting. The Board's proposal about dividend shall be in conformity with the relevant rules.
7. As there must be some interval of time between the end of the financial year and the day on which the Board finalised the Board's Report, the Board shall indicate in the report the up- to- date status and position affecting the financial impact on the operations of the company as well as material changes that have occurred which have a bearing on the working of the company. It would include events such as the following:-
 - a. Disposal of a substantial part of the undertaking ;
 - b. Changes in the capital structure;
 - c. Any serious breakdown which has happened and the steps taken to reduce its adverse impact ;
 - d. Alteration in wage structure arising out of trade union negotiation;
 - e. Material changes concerning purchase of raw materials and sale of the products, etc.

Subject to following the necessary precaution of not to disclose any information which is not in the interest of the business of the company or which may help the competitors, the Board's report shall give details of the changes, if any, that have occurred during the year under review, in the nature of the business of the company and in the class of business in which the company has interest and also in the nature of its subsidiary, if any.

8. The company shall disclose regarding the committees of the company viz. Corporate Social Responsibility Committee, Audit Committee, Nomination and Remuneration committee and Stakeholders Relationship Committee in the Board's Report as per requirement of Section 135, 177, 178 of the Act, if applicable.

Section 177(8) provides that the Board's Report shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefore.

9. The details of Loans, Guarantee and investment shall be mentioned in the Board's Report as per provisions of Section 186 of the Act.

10. The company shall disclose in its Board's report regarding all the particulars of contracts or arrangements with related parties referred to in section 188(1) in the Form AOC-2. [Rule 8 of Companies (Accounts) Rules, 2014]

11. It is provided that in Board's Report, a statement must be enclosed which shows the development and implementation of risk management policy of the company. The suggested items for this statement are as follows:

a. Introduction

b. Meaning and definitions Risk Management c. Types of Risks

d. Risk Management e. Risk Assessment

f. Risk Identification Activities g. Risk Handling

h. Monitoring and Reporting i. Conclusion

13. Section 177(10) provides for disclosure of details of establishment of vigil mechanism by the company on its website, if any, and in the Board's report.

14. Section 197(12) read with Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides for disclosure of following details in the Board's report of the listed company-

(i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;

(ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;

(iii) the percentage increase in the median remuneration of employees in the financial year; (iv) the number of permanent employees on the rolls of company;

(v) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;

(vi) affirmation that the remuneration is as per the remuneration policy of the company.

15. Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 also provides for disclosure of a statement showing the names of the top ten employees in terms of remuneration drawn and the name of every employee, who –

(i) 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;

(ii) 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;

(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

16. Section 204(1) read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requires to annex the Secretarial Audit Report in the **Form – MR-3** with the Board's Report of the listed company and the following specified public companies:

1. Every public company having a paid-up share capital of fifty crore rupees or more; or
2. every public company having a turnover of two hundred fifty crore rupees or more

Such secretarial audit report under section 134, is required to be given by a Company Secretary in practice.

16. Section 134(3)(f) provides that the board of directors shall be bound to give full information and contain a suitable explanation in the Board's Report on any qualification, reservation or adverse remark made by the Auditors in their report on the accounts audited by them and by the company secretary in practice in his secretarial audit report. (*Annexure IX*)

17. Rule 8(3) provides that the Board's Report to include the particulars in respect of conservation of energy/ technology absorption as already detailed in this Chapter. (*Board's Report is placed at Annexure X*)

ANNUAL DISCLOSURE REQUIREMENTS AS PER SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENT) REGULATIONS, 2015

Regulation 33 of SEBI Listing Regulations dealing with Financial Results is as follows:-

1. The approval and authentication of the financial results shall be done by listed entity in the following manner:
 - (a) The quarterly financial results submitted shall be approved by the board of directors:

Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.
 - (b) The financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.
 - (c) The limited review report shall be placed before the board of directors, at its meeting which approves the financial results, before being submitted to the stock exchange(s).
 - (d) The annual audited financial results shall be approved by the board of directors of the listed entity and shall be signed in the manner as specified.
2. The listed entity shall submit the financial results in the following manner:
 - (a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.
 - (b) In case the listed entity has subsidiaries, the listed entity may also submit quarterly/year-to-date consolidated financial results subject to following:

- I. the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year.

Provided that this option shall also be applicable to listed entity that is required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.

- II. in case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.

- (c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

- (i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.

- (ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

- (d) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications applicable only for audit report with modified opinion :

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualification applicable only for audit report with modified opinion.

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the stock exchange(s) while publishing the annual audited financial results.

- (e) The listed entity shall also submit the audited financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.

- (f) The listed entity shall also 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 as at the end of the half-year.

- (4) The applicable formats of the financial results and Statement on Impact of Audit Qualification (for audit report with modified opinion) shall be in the manner as specified by the Board.

- (5) The Statement on Impact of Audit Qualification for audit report with modified opinion and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) shall be reviewed by the stock exchange(s).

Regulation 34 dealing with Annual Report is as follows :

- (1) The listed entity shall submit the annual report to the stock exchange within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013.

- (2) The annual report shall contain the following:
- (a) audited financial statements i.e. balance sheets, profit and loss accounts, etc. and Statement on Impact of Audit Qualification as stipulated in regulation 33(3)(d), if applicable;
 - (b) consolidated financial statements audited by its statutory auditors;
 - (c) cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3 or Indian Accounting Standard 7, as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable;
 - (d) directors report;
 - (e) management discussion and analysis report - either as a part of directors report or addition thereto;
 - (f) for the top five hundred listed entities based on market capitalization (calculated as on March 31 of every financial year), business responsibility report describing the initiatives taken by them from an environmental, social and governance perspective, in the format as specified by the Board from time to time:
- Provided that listed entities other than top five hundred listed companies based on market capitalization and listed entities which have listed their specified securities on SME Exchange, may include these business responsibility reports on a voluntary basis in the format as specified.
- (3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations. (*Schedule V is placed as Annexure XI*)

Regulation 35 of Listing Regulation, 2015 deals with Annual Information Memorandum. It provides that The listed entity shall submit to the stock exchange(s) an Annual Information Memorandum in the manner specified by the Board from time to time.

Regulation 36 of Listing Regulation deals with Documents and Information to shareholders. It provides that-

- (1) The listed entity shall send the annual report in the following manner to the shareholders:
 - (a) Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) for the purpose;
 - (b) Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not so registered;
 - (c) Hard copies of full annual reports to those shareholders, who request for the same
- (2) The listed entity shall send annual report, to the holders of securities, not less than twenty-one days before the annual general meeting.
- (3) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:
 - (a) a brief resume of the director;
 - (b) nature of his expertise in specific functional areas;
 - (c) disclosure of relationships between directors inter-se;
 - (d) names of listed entities in which the person also holds the directorship and the membership of Committees of the board; and
 - (e) shareholding of non-executive directors.

ANNEXURES

Annexure I

SPECIMEN BOARD RESOLUTION FOR PREPARATION OF ANNUAL REPORT IN ABRIDGED FORM FOR MAILING TO THE MEMBERS

“RESOLVED THAT pursuant to the provisions of First proviso of sub – section (1) of Section 136 of the Companies Act, 2013 and Rule 10 of the Companies (Accounts) Rules 2014, the Annual Reports comprising of the Balance Sheet, Profit and Loss Account etc. of the company for the financial year ended 31st March 2013 be also prepared, finalised and audited in the prescribed Form No AOC – 3 for sending to the members of the company.”

“RESOLVED FURTHER THAT the draft audited statement containing salient features of financial statements for the year ended 31st March 2013, prepared in the prescribed Form No. AOC – 3 in accordance with First proviso of sub – section (1) of Section 136 of the Companies Act, 2013 and Rule 10 of the Companies (Accounts) Rules, 2014 as submitted to the meeting, be and are hereby approved and the same be authenticated by the directors of the company as required under Section 136 of the Act and be sent to the statutory auditors of the company for their report thereon and thereafter be sent to the members of the company for adoption at the ensuing annual general meeting of the company.”

Annexure II

SPECIMEN BOARD RESOLUTION FOR KEEPING AND MAINTAINING BOOKS OF ACCOUNTS AT A PLACE OTHER THAN THE REGISTERED OFFICE

“RESOLVED THAT pursuant to the proviso to Section 128(1) of the Companies Act, 2013, the books of accounts of the company be kept and maintained at the company’s head office at with effect from and that Mr., secretary of the company, be and is hereby authorised to file electronically E-Form No AOC-5 with the Registrar of Companies at by affixing his digital signature thereon and with the requisite filing fees within the prescribed time of seven days hereof and to take all necessary actions in this respect.”

Annexure III

SPECIMEN BOARD RESOLUTION FOR APPROVAL OF ANNUAL ACCOUNTS

“RESOLVED THAT draft of the audited Balance Sheet as at _____, Profit and Loss Account for the year ended on that date along with schedules and notes thereon as placed before the Board be and are hereby approved and the same be authenticated by the directors of the company as required under Section 134 of the Companies Act, 2013 and be sent to the Statutory Auditors of the company for their report thereon and thereafter be sent to the members of the company for adoption at the ensuing Annual General Meeting of the
the
Company.”

Format of Annual Report on CSR Activities to be Included in the Board's Report

**FORMAT OF THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED
IN THE BOARD'S REPORT**

Sr. No.	Particulars	Remarks
1	A Brief outline of the Company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web- link to the CSR policy and project or programs.	
2	The Composition of the CSR Committee.	
3	Average net profit of the Company for last three financial years.	
4	Prescribed CSR Expenditure (two per cent, of die amount as in item 3 above).	
5	Details of CSR spent during the financial year a) Total amount to be spent for the financial year b) Amount unspent, if any; c) Manner in which entire amount spent during the financial year is detailed below	

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Sl. No	CSR project or activity Identified	Sector in which the Project is covered	Projects or programs (1) Local area or other (2) Specify the State and district where projects or programs was under taken	Amount outlay (budget) project or programs wise	Amount spent on the projects or programs Sub-heads: (1) Direct expenditure on project or programs Overheads:	Cumulative expenditure upto to the reporting periods	Amount spent: Direct or through implementing agency*
1							
2							
	TOTAL						

*Give details of implementing agency:

1. In case the company has failed to spend the two per cent of the average net profit of the last three financial years or any part thereof, the reasons for not spending the amount in its Board report.
2. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

(Chief Executive Officer or Managing Director or Director)	(Chairman CSR Committee)	(Person specified under clause (d) of sub-section (1) of section 380 of the Act) (Where applicable)
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Annexure V

PART B: COMPLIANCE CERTIFICATE

Regulation 17(8)

The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

- A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
 - 1. these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - 2. these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.
- C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- D. They have indicated to the auditors and the Audit committee
 - (1) significant changes in internal control over financial reporting during the year;
 - (2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
 - (3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

Format to be submitted by listed entity on quarterly basis

1. Name of Listed Entity
2. Quarter ending

1. Composition of Board of Directors

<i>Title (Mr./Ms)</i>	<i>Name of the Director</i>	<i>PAN[§] & DIN</i>	<i>Category (Chairperson/ Executive/ Non-Executive/ independent/ Nominee)[§]</i>	<i>Date of Appointment in the current term/ cessation</i>	<i>Tenure*</i>	<i>No of Directorship in listed entities including this listed entity (Refer Regulation 25(1) of Listing Regulations)</i>	<i>Number of memberships in Audit/ Stakeholder Committee(s) including this listed entity (Refer Regulation 26(1) of Listing Regulations)</i>	<i>No of post of Chairperson in Audit/ Stakeholder Committee held in listed entities including this listed entity (Refer Regulation 26(1) of Listing Regulations)</i>

[§]PAN number of any director would not be displayed on the website of Stock Exchange

[§]Category of directors means executive/non-executive/independent/Nominee. if a director fits into more than one category write all categories separating them with hyphen

* to be filled only for Independent Director. Tenure would mean total period from which Independent director is serving on Board of directors of the listed entity in continuity without any cooling off period.

II. Composition of Committees

<i>Name of Committee</i>	<i>Name of Committee members</i>	<i>Category (Chairperson/ Executive/Non-Executive/ independent/Nominee)[§]</i>
1. Audit Committee 2. Nomination & Remuneration Committee 3. Risk Management Committee(if applicable) 4. Stakeholders Relationship Committee'		

[§]Category of directors means executive/non-executive/independent/Nominee. if a director fits into more than one category write all categories separating them with hyphen

III. Meeting of Board of Directors

<i>Date(s) of Meeting (if any) in the previous quarter</i>	<i>Date(s) of Meeting (if any) in the relevant quarter</i>	<i>Maximum gap between any two consecutive (in number of days)</i>

IV. Meeting of Committees			
<i>Date(s) of meeting of the committee in the relevant quarter</i>	<i>Whether requirement of Quorum met (details)</i>	<i>Date(s) of meeting of the committee in the previous quarter</i>	<i>Maximum gap between any two consecutive meetings in number of days*</i>
* This information has to be mandatorily be given for audit committee, for rest of the committees giving this information is optional			
V. Related Party Transactions			
Subject	Compliance status (Yes/No/NA)^{refer note below}		
Whether prior approval of audit committee obtained			
Whether shareholder approval obtained for material RPT			
Whether details of RPT entered into pursuant to omnibus approval have been reviewed by Audit Committee			
Note			
<p>1. In the column "Compliance Status", compliance or non-compliance may be indicated by Yes/No/N.A.. For example, if the Board has been composed in accordance with the requirements of Listing Regulations, "Yes" may be indicated. Similarly, in case the Listed Entity has no related party transactions, the words "N.A." may be indicated.</p> <p>2. If status is "No" details of non-compliance may be given here.</p>			
VI. Affirmations			
<p>1. The composition of Board of Directors is in terms of SEBI (Listing obligations and disclosure requirements) Regulations, 2015.</p> <p>2. The composition of the following committees is in terms of SEBI(Listing obligations and disclosure requirements) Regulations, 2015</p> <p>(a) Audit Committee</p> <p>(b) Nomination & remuneration committee</p> <p>(c) Stakeholders relationship committee</p> <p>(d) Risk management committee (applicable to the top 100 listed entities)</p> <p>3. The committee members have been made aware of their powers, role and responsibilities as specified in SEBI (Listing obligations and disclosure requirements) Regulations, 2015.</p> <p>4. The meetings of the board of directors and the above committees have been conducted in the manner as specified in SEBI (Listing obligations and disclosure requirements) Regulations, 2015.</p> <p>5. This report and/or the report submitted in the previous quarter has been placed before Board of Directors. Any comments/observations/advice of Board of Directors may be mentioned here:</p>			
Name & Designation			
Company Secretary Compliance Officer / Managing Director CEO			

Note:

Information at Table I and II above need to be necessarily given in 1st quarter of each financial year. However if there is no change of information in subsequent quarter(s) of that financial year, this information may not be given by Listed entity and instead a statement “same as previous quarter” may be given.

Annexure - VI(B)

**Format to be submitted by listed entity at the end of the financial year
(for the whole of financial year)**

I Disclosure on website in terms of Listing Regulations		
<i>Item</i>	<i>Compliance status(Yes/No/NA)^{refer note below}</i>	
Details of 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		
Policy on dealing with related party transactions		
Policy for determining ‘material’ subsidiaries		
Details of familiarization programmes imparted to independent directors		
Contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances		
email address for grievance redressal and other relevant details		
Financial results		
Shareholding pattern		
Details of agreements entered into with the media companies and/or their associates		
New name and the old name of the listed entity		
II Annual Affirmations		
<i>Particulars</i>	<i>Regulation Number</i>	<i>Compliance status (Yes/No/NA)^{refer note below}</i>
Independent directors) have been appointed in terms of		

specified criteria of 'independence' and/or 'eligibility'	16(1)(b) & 25(6)	
Board composition	17(1)	
Meeting of Board of directors	17(2)	
Review of Compliance Reports	17(3)	
Plans for orderly succession for appointments	17(4)	
Code of Conduct	17(5)	
Fees/compensation	17(6)	
Minimum Information	17(7)	
Compliance Certificate	17(8)	
Risk Assessment & Management	17(9)	
Performance Evaluation of Independent Directors	17(10)	
Composition of Audit Committee	18(1)	
Meeting of Audit Committee	18(2)	
Composition of nomination & remuneration committee	19(1) & (2)	
Composition of Stakeholder Relationship Committee	20(1) & (2)	
Composition and role of risk management committee	21(1),(2),(3),(4)	
Vigil Mechanism	22	
Policy for related party Transaction	23(1),(5), (6), (7) & (8)	
Prior or Omnibus approval of Audit Committee for all related party transactions	23(2), (3)	
Approval for material related party transactions	23(4)	
Composition of Board of Directors of unlisted material Subsidiary	24(1)	
Other Corporate Governance requirements with respect to subsidiary of listed entity	24(2),(3), (4), (5) & (6)	
Maximum Directorship & Tenure	25(1) & (2)	
Meeting of independent directors	25(3) & (4)	
Familiarization of independent directors	25(7)	
Memberships in Committees	26(1)	
Affirmation with compliance to code of conduct from members of Board of Directors and Senior management personnel	26(3)	
Disclosure of Shareholding by Non-Executive Directors	26(4)	
Policy with respect to Obligations of directors and senior management	26(2) & 26(5)	

<p>Note</p> <ol style="list-style-type: none"> 1. In the column “Compliance Status”, compliance or non-compliance may be indicated by Yes/No/N.A.. For example, if the Board has been composed in accordance with the requirements of Listing Regulations, “Yes” may be indicated. Similarly, in case the Listed Entity has no related party transactions, the words “N.A.” may be indicated. 2 If status is “No” details of non-compliance may be given here. 3 If the Listed Entity would like to provide any other information the same may be indicated here.
<p>III Affirmations:</p> <p>The Listed Entity has approved Material Subsidiary Policy and the Corporate Governance requirements with respect to subsidiary of Listed Entity have been complied.</p>
<p>Name & Designation</p> <p>Company Secretary / Compliance Officer / Managing Director / CEO</p>

Annexure - VI(C)

Format to be submitted by listed entity at the end of 6 months after end of financial year along-with second quarter report of next financial year

1 Affirmations		
<i>Broad heading</i>	<i>Regulation Number</i>	<i>Compliance status (Yes/No/NA)^{refer note below}</i>
Copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report, business responsibility report displayed on website	46(2)	
Presence of Chairperson of Audit Committee at the Annual General Meeting	18(1)(d)	
Presence of Chairperson of the nomination and remuneration committee at the annual general meeting	19(3)	
Whether “Corporate Governance Report” disclosed in Annual Report	34(3) read with para C of Schedule V	
<p>Note</p> <ol style="list-style-type: none"> 1 In the column “Compliance Status”, compliance or non-compliance may be indicated by Yes/No/N.A.. For example, if the Board has been composed in accordance with the requirements of Listing Regulations, “Yes” may be indicated. Similarly, in case the Listed Entity has no related party transactions, the words “N.A.” may be indicated. 2 If status is “No” details of non-compliance may be given here. 3 If the Listed Entity would like to provide any other information the same may be indicated here. 		
<p>Name & Designation</p> <p>Company Secretary / Compliance Officer / Managing Director / CEO</p>		

SPECIMEN OF THE CHAIRMAN'S SPEECH**XYZ MOTORS LIMITED****CHAIRMAN'S SPEECH****33rd Annual General Meeting on March 20, 2015**

Good Morning Everyone,

On behalf of the Board of Directors, I would like to welcome you all to the 33rd Annual General Meeting of the Company.

To begin with let me give you a brief overview of the Indian economy. As you all know, after going through a rough period of economic slowdown over 36 months, the industry is finally seeing early signs of recovery. In the year 2014, the motorcycle industry recorded a growth of 8% over 2013, even as the domestic commercial vehicles industry (5 tonne and above) grew at only 0.7% in 2014 over 2013. Weak consumer spending due to higher inflation and interest rates had an adverse impact on demand for these vehicles.

The green shoots have started emerging in certain segments of the industry. The heavy duty segment of commercial vehicles industry grew by 17.6%, most of this growth was recorded in the last 2 quarters of calendar year 2014. Going forward, I expect a deeper and faster recovery in economic activity in 2015, aided by pick up in infrastructure and mining activities, lower fuel price and lower inflation along with expected softening of interest rates. In its Budget for 2015-16, Government has earmarked large amounts for infrastructure related activities. All these factors will result in the creating economic growth momentum. I am confident that in the long run the auto industry is poised for significantly higher growth.

BUSINESS PERFORMANCE

I am pleased to inform you that even in such challenging business environment, XYZ Motors Limited has had an excellent year. Your businesses – Royal Enfield in the motorcycle space and VE Commercial Vehicles (VECV) in the commercial vehicle space – delivered a solid performance in 2014. On consolidated basis, your company recorded its highest ever total income from operations at Rs.8738.3 Crores. It did so while maintaining a strong market pricing and efficient operations, resulting in a record operating profit i.e. Earnings Before Interest and Taxes (EBIT) of Rs. 894.9 Crores.

At standalone level, your Company achieved an all-time high top-line growth during the financial year 2014 with total net revenue from operations at Rs. 3031.2 Crores. The profit before depreciation and interest amounted to Rs. 733.6 Crores, which is 24% of the total revenue. After accounting for interest and dividend income of Rs. 116.3 Crores, interest expense of Rs. 1.7 Crores and depreciation of Rs.50.2 Crores, profit before tax amounts to Rs. 798 Crores. Profit after tax amounts to Rs. 558.9 Crores after income tax provision of Rs. 239.1 Crores

XYZ Motors Limited is one of the most profitable companies in the automotive business with no debt and a consistently growing topline. At 22.5%, Royal Enfield's EBIT margin is better than that of any other motorcycle company in the world, and possibly the highest level compared to any automotive brand globally as well. VECV's EBIT margin at 3.7% was the best amongst Indian CV companies in 2014; and VECV's lean business model gives it the distinction of being the only CV company to remain profitable in every quarter during the longest downturn in the recent decades for the Indian commercial vehicle industry.

In addition to capacity expansion, your company is also investing in upgrading its capabilities in product development with two new technology centres on the anvil. The larger technology centre will be built on a 4.5 acre property that was acquired on Old Mahabalipuram Road in Chennai, and will be operational by Q2 of 2016; the smaller satellite center, being set up in UK, will be operational by the end of 2015. These new centres will be responsible for creating a robust and exciting range of new motorcycles from the two new platforms that are under development.

Your company has been engaged in revamping customer experience at retailer's end, while expanding distribution footprint. In February 2014, Royal Enfield's first concept store in Select City Walk, Saket, New Delhi was opened. It has been designed as a motorcycling enthusiast's living room. This brand new retail format showcases the brand's philosophy of "Pure Motorcycling". In May 2014, Royal Enfield opened its first exclusive store in London in the new

retail identity. Your company has opened 100 stores in this format in India, and over the next two years, it plans to convert all stores across the globe to this format. Along with showcasing Royal Enfield's motorcycles, these stores also offer the entire range of Royal Enfield gear, including helmets, jackets, riding trousers, t-shirts, etc.

Royal Enfield is working towards its next level of growth with new products, retail and service excellence. It is also building a riding culture and eco-system with a strategic focus on international markets. Towards this, Royal Enfield has increased brand building momentum in key markets like UK, Europe, US and Colombia in 2014. Royal Enfield launched its first ever exclusive store in London in May and recreated the historic Top to Tip ride in UK on Continental GT's, to mark the launch. Royal Enfield also participated in several classic events such as the Isle of Man Classic TT in August and notably at the Goodwood Revival festival in September where it unveiled its new gear collection inspired by the

Your company has been enhancing its people capabilities and bandwidth by adding relevant expertise to the team. Some of the key hires include Mr. A who has joined us as President, Royal Enfield. A joins us from Unilever and will be in charge of the commercial functions in the company. After leading Harley Davidson's geographic expansion across emerging markets, industry veteran Mr. B has recently joined your company to drive Royal Enfield's growth in North America. Mr. C who has created some extraordinary motorcycles as the head of design for Ducati for over a decade and is one of the most prolific industrial designers has also joined your company.

Your company will be investing Rs. 500 crores in 2015. This will be towards capacity creation and new product development.

Dividend

The Directors are pleased to recommend a dividend of 500% (Rs. 50/- per Equity Share of Rs. 10/- each) for the year ended December 31, 2014. Last year, your Company has paid dividend of 300% (Rs. 30/- per Equity Share of Rs. 10/- each) to the shareholders of the Company.

MARKET & FUTURE PROSPECTS

Your Company's motorcycle business enjoys high credibility and has seen phenomenal growth over the years. Your Company's focused marketing efforts; improved product quality and expanded distribution network have enabled the brand to expand its reach to a much larger customer base. Your Company has set its goal to be a leader in the global mid-size motorcycle market. In order to achieve this goal, your Company will invest in increasing manufacturing capacity, strengthening supply chain, developing product development infrastructure and expanding distribution network. Your Company will invest in all these areas to seize the significant opportunities for growth that it believes lie in India and international markets.

Its highly differentiated product offering that generates maximum customer value proposition, excellence in manufacturing and relentless focus on quality will enable it to build sustainable and profitable growth in times to come.

XYZ Polaris Private Limited is expected to commence commercial production in 2015.

CONCLUSION

To conclude, I wish to convey my thanks and acknowledgement for the co-operation and assistance extended by the Central Government, State Government, Financial Institutions, the Company's Bankers, dealers, customers and suppliers. I would also like to congratulate each and every member of the XYZ Family for their sincere and committed contribution in this sound financial performance for the year 2014. I look forward to their continued support and encouragement as we embark on another exciting year. My best wishes to all of you.

I thank all the members present for participating in today's meeting.

March 20, 2015
New Delhi

Chairman
Annexure VIII

SPECIMEN BOARD RESOLUTION FOR APPROVAL OF THE BOARD'S REPORT

“RESOLVED THAT the draft Boards' Report to the Shareholders of the company for the year ended 31st March 2015 prepared in accordance with the provisions of Section 134 of the Companies Act, 2013 together

with its Annexures and also containing suitable explanation and fullest information on every reservation, qualification or adverse remarks contained in Auditor's reports, as submitted to the meeting, be and is hereby approved and the same be signed by Shri..... Chairman of the company, by Shri..... Managing Director and Shri..... Director for and on behalf of the Board of Directors of the company."

Annexure IX

SPECIMEN RESOLUTION TO BE PASSED AT A MEETING OF THE BOARD OF DIRECTORS FOR APPROVAL OF THE BOARD'S REPORT CONTAINING BOARD'S RESPONSE TO AUDITORS' COMMENTS AND QUALIFICATIONS

"RESOLVED THAT, pursuant to Section 134 of the Companies Act, 2013 the draft of the Board's Report for the year ended....., 2013 as circulated earlier and as modified by incorporating the information and explanation given by the Board on every reservation, qualification or adverse remark contained in the Auditors' Report under Section 143 (2), and as laid on the table, be and is hereby approved and that the Board's Report be signed by the Chairman on behalf of the Board and that the Secretary of the company be directed to issue the same to the members of the company together with the printed copies of the audited accounts, and the Auditors' Report."

Annexure X

Board's Report

Directors' Reports

Your Directors are pleased to present 21st Annual Report and the audited financial statements for the financial year ended on 31st March, 2016.

Financial Results:

The financial performance of the Company, for the year ended on 31st March, 2016 is summarized below:

Particulars	Standalone		Consolidated	
	For the year ended 31 st March 2016	For the year ended 31 st March 2015	For the year ended 31 st March 2016	For the year ended 31 st March 2015
Sales and Other Income	23,956	21,494	45,831	42,254
Profit before Interest, Depreciation, Exceptional Expenses & Tax [PBIDET]	11,332	9,307	12,751	10,841
Less: Depreciation	455	243	773	465
Profit before Interest, Exceptional Expenses & Tax (PBIET)	10,877	9,064	11,978	10,376
Less: Interest	5	4	13	13
Profit Before Tax [PBT]	10,872	9,060	11,965	10,363
Less: Provision for Tax	-23	-585	850	532
Profit After Tax [PAT]	10,895	9,645	11,115	9,831
Less: Minority Interest	-	-	220	186
Profit attributable to shareholders	10,895	9,645	10,895	9,645
Add: Profit brought forward from the previous year	24,149	18,247	24,149	18,247
Less: Additional depreciation upon revision in useful lives of tangible assets	26	0	26	0

Profit available for appropriation, which is appropriated as follows:	35,018	27,892	35,018	27,892
Proposed Final Dividend	2,344	2,344	2,344	2,344
Corporate Dividend Tax on Dividend	477	399	477	399
Transfer to General Reserve	0	1,000	0	1,000
Balance carried to Balance Sheet	32,197	24,149	32,197	24,149
Total	35,018	27,892	35,018	27,892
Basic and Diluted Earning Per Share (EPS of FV Rs. 10/-) [in Rupees]	27.88	24.69	27.88	24.69

Annual Report 2015-2016

The Company proposes to retain an amount of Rs. 32,197 lacs in the Statement of Profit and Loss.

The consolidated financial highlights include the financials of ABC, XYZ, a partnership firm.

Results of operations:

During the year under review, the consolidated gross sales grew by 3.1%. On standalone basis, the Company has earned total revenue of Rs. 23,956 lacs. The PBIDT increased by 21.8 % to Rs. 11,332 lacs and the Profit Before Tax increased by 20% to Rs. 10,872 lacs. The Profit after Tax has increased to Rs. 10,895 lacs as compared to Rs.9,645 lacs in the previous year and the EPS has increased from Rs. 24.69 in the previous year to Rs. 27.88. A detailed analysis of performance for the year has been included in the Management Discussion and Analysis, which forms part of the Annual Report.

Dividend:

Your Directors have recommended a dividend of Rs. 6/- [i.e. 60%] per equity share [last year Rs. 6/- per equity share] on 3,90,72,089 equity shares of Rs. 10/- each fully paid-up for the financial year ended on 31st March, 2016, amounting to Rs. 2,821 lacs [inclusive of corporate dividend tax of Rs. 477 lacs]. The dividend, if declared by the shareholders at the ensuing Annual General Meeting, will be paid to those shareholders, whose names stand registered in the Register of Members as on 29th July, 2016. In respect of shares held in dematerialized form, it will be paid to the members whose names are furnished by the National Securities Depository Limited and the Central Depository Services [India] Limited, as beneficial owners. The Dividend Payout ratio for the current year (inclusive of Corporate Dividend Tax) is 25.90 percent on profits.

During the year, the unclaimed dividend pertaining to the dividend for the year ended 31st March, 2008 was transferred to Investor Education and Protection Fund.

Consolidated financial Statements:

ABC, XYZ is under the majority control of the Company and hence the accounts of ABC, XYZ are consolidated with the accounts of the Company in accordance with the provisions of Accounting Standard [AS]- 21 on Consolidated Financial Statements issued by the Institute of Chartered Accountants of India, Companies Act, 2013 ["Act"] read with Schedule III of the Act and Rules made thereunder and the Listing Agreement with the Stock Exchanges. The audited Consolidated Financial Statements are provided in this Annual Report.

Though Company does not have any subsidiary Company, the Company has formed a policy relating to material subsidiaries, which is approved by the Board of Directors and can be accessed on the Company's website at the link:

.....

Related Party Transactions:

All transactions entered by the Company during the financial year with related parties were in the ordinary course of business and on an arm's length basis. During the year, the Company had not entered into any transactions with related parties which could be considered as material in accordance with the policy of the Company on materiality of related party transactions.

The Policy on materiality of related party transactions and dealing with related party transactions as approved by the Board may be accessed on the Company's website at the link : <http://www.zyduswellness.in/investor/Policy%20on%20Related%20Party%20Transactions-May15.pdf>. Disclosures on related party transactions are set out in Note No. 34 to the financial statements.

Directors:

i. Cessation:

Mr. P [DIN-XXXXXXXX], Director and Mr. Q [DIN-XXXXXXXX], Managing Director of the Company have resigned with effect from 14th July, 2015 and 14th April, 2016 respectively.

The Board places on record its appreciation for contributions and guidance provided by Mr. P and Mr. Q during their respective tenure as a Director / Managing Director of the Company.

ii. Retirement by rotation:

In accordance with the provisions of section 152[6] of the Act and in terms of Articles of Association of the Company, Dr. Sharvil P. Patel [DIN-XXXXXXXX] will retire by rotation at the ensuing Annual General Meeting and being eligible, offer himself for reappointment. The Board recommends his reappointment.

iii. Appointment of Additional / Whole Time Director:

Mr. R was appointed as an Additional Director and Whole Time Director w.e.f. 14th May, 2016, subject to the approval of the Members at the ensuing Annual General Meeting. Mr. R is designated as the Key Managerial Personnel pursuant to the provisions of section 203 of the Act.

iv. Independent Directors:

The Independent Directors have submitted their declarations of independence, as required pursuant to the provisions of section 149(7) of the Act, stating that they meet the criteria of independence as provided in section 149(6).

v. Chairman:

Upon cessation of Mr. M [DIN-00131852] as the Director of the Company, Dr. N was appointed as the Chairman of the Board and Company w.e.f. 14th July, 2015.

vi. Key Managerial Personnel:

The following persons were designated as Key Managerial Personnel:

1. Mr. Q, Managing Director, [up to 14th April, 2016]
2. Mr. R, Whole Time Director, [w.e.f. 14th May, 2016],
3. Mr. O, Chief Financial officer and
4. Mr. J, Company Secretary

vii. Board Evaluation:

Pursuant to the provisions of the Act and Rules made thereunder and as provided under Schedule IV of the Act and clause 49 of the Listing Agreement, the Board has carried out the annual performance evaluation of itself, the Directors individually as well as the evaluation of its committees. The manner in which the evaluation was carried out is provided in the Corporate Governance Report, which is part of this Annual Report.

viii. Remuneration Policy:

The Board has on the recommendations of Nomination and Remuneration Committee, framed a Policy on selection and appointment of Directors, Senior Management and their remuneration. The Remuneration Policy is stated in the Corporate Governance Report, which is part of this Annual Report.

Directors' Responsibility Statement:

In terms of section 134[3][c] of the Act, your Directors state that:

- i. in the preparation of the annual financial statements for the year ended on 31st March, 2016, applicable accounting standards read with requirements set out under schedule III of the Act, have been followed along with proper explanation relating to material departures, if any,
- ii. such accounting policies have been selected and applied consistently and judgments and estimates made that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company as at 31st March, 2016 and of the profit of the company for the year ended on that date
- iv. the annual financial statements are prepared on a going concern basis,
- v. proper internal financial control are in place and that the financial controls are adequate and are operating
- vi. the systems to ensure compliance with the provisions of all applicable laws are in place and are adequate and operating effectively.

Board Meetings:

A calendar of meetings to be held in a year is decided in advance by the Board and circulated to the Directors. During the year, four Board and four Audit Committee Meetings were convened and held, the details of which are provided in the Corporate Governance Report, forming part of the Directors' Report. The gap between two consecutive meetings was not more than one hundred and twenty days as provided in section 173 of the Act.

Corporate Governance:

The Company has complied with the Corporate Governance requirements under the Act and as stipulated in Listing Regulations. A separate section on detailed report on the Corporate Governance practices followed by the Company under the Listing Agreement along with a certificate from M/s. DEF & Associates, Practising Company Secretary, confirming the compliance, is part of the Annual Report.

i. Statutory Auditor and their Report:

M/s. D, Chartered Accountants, [Firm Registration No. 102511W] Statutory Auditor of the Company hold office until the conclusion of the ensuing 21st Annual General Meeting and are eligible for reappointment. Pursuant to provisions of section 139 of the Companies Act, 2013 and the Rules made thereunder, the Board proposes to reappoint M/s. Dhirubhai Shah & Doshi, Chartered Accountants as Statutory Auditor of the Company from the conclusion of the ensuing 21st Annual General Meeting till the conclusion of 26th Annual General Meeting. They have furnished a certificate confirming the eligibility under section 141 of the Companies Act, 2013 and Rules made thereunder.

The Board based on the recommendation of Audit Committee, recommends the reappointment of M/s D, Chartered Accountants, as the Statutory Auditor of the Company.

The Board has duly reviewed the Statutory Auditor's Report on the Accounts. The observations and comments, appearing in the Auditor's Report are self-explanatory and do not call for any further explanation / clarification by the Board of Directors as provided under section 134 of the Act.

ii. Cost Auditor:

Pursuant to the provisions of section 148[3] of the Act read with The Companies [Cost Records and Audit] Amendment Rules, 2014, the cost audit records maintained by the Company in respect of its product utraltfe, is required to be audited. The Board had, on the recommendation of Audit Committee, appointed M/s UV & Associates, Cost Accountants [Firm Registration No.000338] to audit the cost records of for the financial year ended on 31st March, 2017 on a remuneration of Rs. 1.80 lacs As required under the Act and Rules made thereunder, the remuneration payable to the Cost Auditor is required to be placed before the Members ^General Meeting for ratification. Accordingly, a resolution to ratify the remuneration payable to M/s. UV & Associates for the financial year ending on 31st March, 2016 is included at Item No. 8 of the Notice convening 21st Annual General Meeting.

iii. Secretarial Auditor and Secretarial Audit Report:

Pursuant to the provisions of section 204 of the Act and The Companies [Appointment and Remuneration of Managerial Personnel] Rules, 2014, the Company has appointed M/s. DEF & Associates, Practicing Company Secretary to undertake Secretarial Audit for the financial year ended on 31st March, 2016. Secretarial Audit Report is attached to this report as **Annexure-“A”**. The Board has duly reviewed the Secretarial Auditor's Report and the observations and comments, appearing in the report are self-explanatory and do not call for any further explanation / clarification by the Board of Directors as provided under section 134 of the Act.

Corporate Social Responsibility [CSR]:

The Board of Directors of the Company has constituted a Corporate Social Responsibility [CSR] Committee under the Chairmanship of Dr. N. Other members of the Committee are Mr. Y and Prof. Z CSR Committee has recommended to the Board, a CSR Policy, indicating the activities to be undertaken by the Company, which is approved by the Board. The CSR Policy is posted on the website of the Company.

As part of its initiatives under Corporate Social Responsibility [CSR], the Company has contributed for healthcare, education and research in cancer and for eradicating poverty and malnutrition for the year under review. Other details of the CSR activities as required under section 135 of the Act are given in the CSR Report at **Annexure- B**.

Business Risk Management:

A well-defined risk management mechanism covering the risk mapping and trend analysis, risk exposure, potential impact and risk mitigation process is in place. The objective of the mechanism is to minimize the impact of risks identified and taking advance actions to mitigate it. The mechanism works on the principles of probability of occurrence and impact, if triggered. A detailed exercise is being carried out to identify, evaluate, monitor and manage both business and non-business risks.

Discussion on risks and concerns are covered in the Management Discussion and Analysis Report, which forms part of this Annual Report.

Internal control systems and its adequacy:

The Company has internal control systems commensurate with the size, scale and complexity of its business operations. The scope and functions of internal auditor are defined and reviewed by the Audit committee. The internal auditor reports to the Chairman of the Audit Committee. Internal Auditors presents their quarterly report to the Audit Committee, highlighting various observations, system and procedure lapses and corrective actions are taken. The internal auditor also assesses opportunities for improvement of business processes, systems

and controls, to provide recommendations, which can add value to the organization and it also follows up on the implementation of corrective actions and processes. The Management Auditor also ensures the compliance of the observations of internal and statutory auditors and presents his report to the Audit Committee.

Managing the Risks of fraud, corruption and unethical business practices:

i. Vigil Mechanism / Whistle Blower Policy:

The Company has established vigil mechanism and framed whistle blower policy for Directors and employees to report concerns about unethical behavior, actual or suspected fraud or violation of Company's Code of Conduct or Ethics Policy. Whistle Blower Policy is disclosed on the website of the Company.

ii. Zydus Business Conduct Policy:

The Company has framed "ABC Business Conduct Policy". Every employee is required to review and sign the policy at the time of joining and an undertaking shall be given for adherence to the Policy. The objective of the Policy is to conduct the business in an honest, transparent and in an ethical manner. The policy provides for anti-bribery and avoidance of other corruption practices by the employees of the Company.

Extract of Annual Return:

The relevant information in prescribed Form No. MGT-9 pertaining to extract of Annual Return is attached to this Report as **Annexure-"C"**.

Constitution of Audit Committee:

The Board has reconstituted the Audit Committee which comprises of Mr. H as the Chairman and Dr. B.M. Hegde, Prof. Z and Mr. Y as the members. More details on the Committee are given in the Corporate Governance Report.

Particulars of Employees:

The information required under section 197 of the Act read with Rule 5[1] of The Companies [Appointment and Remuneration of Managerial Personnel] Rules, 2014 are given in **Annexure-"D"**.

Energy Conservation, Technology Absorption and Foreign Exchange Earnings and Outgo:

Information on conservation of energy, technology absorption, foreign exchange earnings and outgo, as required to be disclosed under section 134[3][m] of the Act read with the Companies [Accounts] Rules, 2014, are provided in the **Annexure-"E"** and forms part of this Report.

General Disclosure:

Your Directors state that the Company has made disclosures in this report for the items prescribed in section 134[3] of the Act and Rule 8 of The Companies [Accounts] Rules, 2014 to the extent the transactions took place on those items during the year.

Acknowledgement:

Your Directors wish to place on record their sincere appreciation for significant contributions made by the employees at all levels through their dedication, hard work and commitment, enabling the Company to achieve good performance during the year under review.

Your Directors also take this opportunity to place on record the valuable co-operation and support extended by the banks, government, business associates and the shareholders for their continued confidence reposed in the Company and look forward to having the same support in all future endeavors.

For and on behalf of the Board

Place: Ahmedabad

N

Date : 14th May, 2016

Chairman

SCHEDULE V: ANNUAL REPORT

[See Regulation 34(3) and 53(f)]

The annual report shall contain the following additional disclosures:

A. Related Party Disclosure:

1. The listed entity shall make disclosures in compliance with the Accounting Standard on “Related Party Disclosures”.
2. The disclosure requirements shall be as follows:

Sl. No.	In the accounts of	Disclosures of amounts at the year end and the maximum amount of loans/ advances/ Investments outstanding during the year.
1	Holding company	– Loans and advances in the nature of loans to subsidiaries by name and amount.
2	Subsidiary	– Loans and advances in the nature of loans to associates by name and amount.
3	Holding company	– Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount. Same disclosures as applicable to the parent company in the accounts of subsidiary company. Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.

For the purpose of above disclosures directors’ interest shall have the same meaning as given in Section 184 of Companies Act, 2013.

3. The above disclosures shall be applicable to all listed entities except for listed banks.

B. Management Discussion and Analysis:

1. This section shall include discussion on the following matters within the limits set by the listed entity’s competitive position:
 - (a) Industry structure and developments.
 - (b) Opportunities and Threats.
 - (c) Segment-wise or product-wise performance.
 - (d) Outlook
 - (e) Risks and concerns.
 - (f) Internal control systems and their adequacy.
 - (g) Discussion on financial performance with respect to operational performance.
 - (h) Material developments in Human Resources / Industrial Relations front, including number of people employed.

2. Disclosure of Accounting Treatment:

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management’s

explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.

C. Corporate Governance Report:

The following disclosures shall be made in the section on the corporate governance of the annual report.

- (1) A brief statement on listed entity's philosophy on code of governance.
- (2) Board of directors:
 - (a) composition and category of directors (e.g. promoter, executive, non-executive, independent non-executive, nominee director - institution represented and whether as lender or as equity investor);
 - (b) attendance of each director at the meeting of the board of directors and the last annual general meeting;
 - (c) number of other board of directors or committees in which a directors is a member or chairperson;
 - (d) number of meetings of the board of directors held and dates on which held;
 - (e) disclosure of relationships between directors inter-se;
 - (f) number of shares and convertible instruments held by nonexecutive directors;
 - (g) web link where details of familiarisation programmes imparted to independent directors is disclosed.
- (3) Audit committee:
 - (a) brief description of terms of reference;
 - (b) composition, name of members and chairperson;
 - (c) meetings and attendance during the year.
- (4) Nomination and Remuneration Committee:
 - (a) brief description of terms of reference;
 - (b) composition, name of members and chairperson;
 - (c) meeting and attendance during the year;
 - (d) performance evaluation criteria for independent directors.
- (5) Remuneration of Directors:
 - (a) all pecuniary relationship or transactions of the non-executive directors vis-à-vis the listed entity shall be disclosed in the annual report;
 - (b) criteria of making payments to non-executive directors. alternatively, this may be disseminated on the listed entity's website and reference drawn thereto in the annual report;
 - (c) disclosures with respect to remuneration: in addition to disclosures required under the Companies Act, 2013, the following disclosures 86 shall be made:
 - (i) all elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc;
 - (ii) details of fixed component and performance linked incentives, along with the performance criteria;
 - (iii) service contracts, notice period, severance fees;
 - (iv) stock option details, if any and whether issued at a discount as well as the period over which accrued and over which exercisable.

- (6) Stakeholders' grievance committee:
 - (a) name of non-executive director heading the committee;
 - (b) name and designation of compliance officer;
 - (c) number of shareholders' complaints received so far;
 - (d) number not solved to the satisfaction of shareholders;
 - (e) number of pending complaints.
- (7) General body meetings:
 - (a) location and time, where last three annual general meetings held;
 - (b) whether any special resolutions passed in the previous three annual general meetings;
 - (c) whether any special resolution passed last year through postal ballot – details of voting pattern;
 - (d) person who conducted the postal ballot exercise;
 - (e) whether any special resolution is proposed to be conducted through postal ballot;
 - (f) procedure for postal ballot.
- (8) Means of communication:
 - (a) quarterly results;
 - (b) newspapers wherein results normally published;
 - (c) any website, where displayed;
 - (d) whether it also displays official news releases; and
 - (e) presentations made to institutional investors or to the analysts.
- (9) General shareholder information:
 - (a) annual general meeting - date, time and venue;
 - (b) financial year;
 - (c) dividend payment date;
 - (d) the name and address of each stock exchange(s) at which the listed entity's securities are listed and a confirmation about payment of annual listing fee to each of such stock exchange(s);
 - (e) stock code;
 - (f) market price data- high, low during each month in last financial year;
 - (g) performance in comparison to broad-based indices such as BSE sensx, CRISIL Index etc;
 - (h) in case the securities are suspended from trading, the directors 87 report shall explain the reason thereof;
 - (i) registrar to an issue and share transfer agents;
 - (j) share transfer system;
 - (k) distribution of shareholding;
 - (l) dematerialization of shares and liquidity;

- (m) outstanding global depository receipts or american depository receipts or warrants or any convertible instruments, conversion date and likely impact on equity;
- (n) commodity price risk or foreign exchange risk and hedging activities;
- (o) plant locations;
- (p) address for correspondence.

(10) Other Disclosures:

- (a) disclosures on materially significant related party transactions that may have potential conflict with the interests of listed entity at large;
 - (b) details of non-compliance by the listed entity, penalties, strictures imposed on the listed entity by stock exchange(s) or the board or any statutory authority, on any matter related to capital markets, during the last three years;
 - (c) details of establishment of vigil mechanism, whistle blower policy, and affirmation that no personnel has been denied access to the audit committee;
 - (d) details of compliance with mandatory requirements and adoption of the non-mandatory requirements;
 - (e) web link where policy for determining 'material' subsidiaries is disclosed;
 - (f) web link where policy on dealing with related party transactions;
 - (g) disclosure of commodity price risks and commodity hedging activities.
- (11) Non-compliance of any requirement of corporate governance report of sub-paras (2) to (10) above, with reasons thereof shall be disclosed.
- (12) The corporate governance report shall also disclose the extent to which the discretionary requirements as specified in Part E of Schedule II have been adopted.
- (13) The disclosures of the compliance with corporate governance requirements specified in regulation 17 to 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 shall be made in the section on corporate governance of the annual report.

D. Declaration signed by the chief executive officer stating that the members of board of directors and senior management personnel have affirmed compliance with the code of conduct of board of directors and senior management.

E. Compliance certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance shall be annexed with the directors' report.

F. Disclosures with respect to demat suspense account/ unclaimed suspense account

- (1) The listed entity shall disclose the following details in its annual report, as long as there are shares in the demat suspense account or unclaimed suspense account, as applicable :
- (a) aggregate number of shareholders and the outstanding shares in the suspense account lying at the beginning of the year;
 - (b) number of shareholders who approached listed entity for transfer of shares from suspense account during the year
 - (c) number of shareholders to whom shares were transferred from suspense account during the year;
 - (d) aggregate number of shareholders and the outstanding shares in the suspense account lying at the end of the year;

- (e) that the voting rights on these shares shall remain frozen till the rightful owner of such shares claims the shares.

LESSON ROUND-UP

- After the financial statements have been audited by the auditors and approved by the Board, these are laid before the annual general meeting of the members of the company for their adoption.
- A holding company is required to attach with its balance sheet a copy of the balance sheet, profit and loss accounts, Board of Directors' report, Auditors' Report of its subsidiary Company.
- Under Section 143(2), it is the duty of the auditor to make a report to the members of the company on the accounts examined by, and on every balance sheet, every profit and loss account and/or every other document declared by the Act to be part of or annexed to either and laid before the company in general meeting during his tenure of office.
- The matters to be included in the Board's report have been specified in section 134(3) of the Companies Act, 2013.
- Listed companies are required to comply with SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015.
- Directors' Responsibility statement, Disclosure of information about each director and Particulars of employees should also form part of Board's report.
- There is no statutory provision under which chairperson of an annual general meeting must make a speech or statement at the meeting. However, Chairman's speech is usually utilized for a wide-ranging review of Company's progress.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not be submitted for evaluation)

1. Explain the procedure to be followed for preparing abridged balance sheet and profit and loss account by a listed company.
2. Every Producer Company is required to keep at it registered office proper books of account. Explain.
3. State the items that are to be covered under Directors' Responsibility Statement.
4. What information is required for the preparation of Directors' Report?
5. What points should be kept in mind while preparing the chairman's speech of the Company?

Lesson 13

Distribution of Profits

LESSON OUTLINE

- Meaning of Dividend
- Declaration of Dividend
- Procedure for declaration and payment of Interim Dividend
- Procedure for declaration and payment of Final Dividend
- Procedure for declaration of dividend out of Company's reserves
- Claiming of Unclaimed /Unpaid Dividend
- Procedure for transfer of unpaid or unclaimed dividend to the Investor Education and Protection fund
- Annexures – Specimen Notice/Resolution
- LESSON ROUND UP
- SELF TEST QUESTION

LEARNING OBJECTIVES

When a company distributes the profits earned by it to the shareholders, it is said that it has paid dividend. Thus, dividend is the payment made by a company to its shareholders out of the distributable profits.

Dividend is calculated as a percentage of the nominal value of their shares, which is fixed for holders of preference shares and fluctuating for holders of equity or ordinary shares. Distributable profits are the profits of a company that are available for distribution as dividends to the shareholders in accordance with the provisions of the Act.

After going through this lesson, you will be able to understand practical and procedural aspects relating to declaration and payment of dividend as well as transfer of unpaid and unclaimed dividend to Investor Education and Protection Fund.

MEANING OF DIVIDEND

The term 'dividend' has been defined under Section 2(35) of the Companies Act, 2013. The term "Dividend" includes any interim dividend. It is an inclusive and not an exhaustive definition. According to the generally accepted definition, "dividend" means the profit of a company, which is not retained in the business and is distributed among the shareholders in proportion to the amount paid-up on the shares held by them.

No dividend shall be declared or paid by a company for any financial year except—

(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of [both:].

Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; or"

(b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the free reserves], such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

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

(2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.

The Supreme Court in *re. C.I.T. v. Girdhardas & Co. (P) Ltd.* (1967) 1 Comp. LJ 1. defined the term "dividend" in the following manner:

- (i) As applied to a company which is a going concern, it ordinarily means the portion of the profit of the company which is allocated to the holders of shares in the company.
- (ii) In the event of winding up, it means a division of the net realised assets among creditors and contributories according to their respective rights.

The companies having licence under Section 8 of the Act are prohibited by their constitution from paying any dividend to its members. They apply the profits in promoting the objects of the company.

Declaration of Interim Dividend

The Board of Directors may declare interim dividend during financial year out of surplus in profit and loss account. In case, a company is incurring loss as per financials of latest quarter, interim dividend shall not be higher than average dividend declared by the company during last three financial years.

Deposit of Declared Dividend

The amount of dividend and interim dividend shall be deposited in a separate account in a scheduled Bank within five days from the date of declaration of such dividend.

The dividend shall be paid to shareholder or to his banker in cash not otherwise. However issue of bonus shares

out of distributable profit or free reserve is permitted and not be deemed to be a violation of this rule. Making a partly paid share, fully paid through payment from distributable profit and free reserve is permitted.

Any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder.

Prohibition on declaration of Dividend

A company which fails to comply with the provisions of Section 73 and 74 related to deposit and repayment of deposit or interest thereon shall not declare and dividend on its equity shares as long as such failure continue.

Right of Members Pending Registration of Transfer

According to section 126, where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall,—

- (a) transfer the dividend in relation to such shares to the Unpaid Dividend Account unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and
- (b) keep in abeyance in relation to such shares, (a) any offer of rights shares and (b) any issue of fully paid-up bonus shares.

Punishment for Failure to Distribute Dividend [Section 127]

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, (a) 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 (b) the company shall be liable to pay simple interest at the rate of eighteen percent per annum during the period for which such default continues.

No offence under this section shall be deemed to have been committed :

- (a) where the dividend could not be paid by reason of the operation of any law;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- (c) where there is a dispute regarding the right to receive the dividend;
- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

Unpaid Dividend Account

According to section 124, where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

Thus number of days to transfer unpaid or unclaimed amount of dividend to unpaid dividend account comes to $30 + 7 = 37$ days.

The company shall, within a period of ninety days of making any transfer of an amount 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.

If any default is made in transferring the total amount referred to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them. The Term enure convey to take, or have effect or serve to the use, benefit, or advantage of members.

Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. The person can claim this amount from company only within seven years of its transfer to Unpaid Dividend Account. After this period not only his dividend amount but also shares shall be transferred to the Investor Education and Protection Fund (IEPF), in respect of shares for which dividend has not been paid or claimed for seven consecutive years or more.

Any person claiming to be entitled to an amount lying in the Investor Education and Protection Fund may apply to the authority constituted under sub-section (5) of Section 125 of Companies Act, 2013 i.e., Investor Education and Protection Fund Authority for the payment of the money claimed.

Investor Education and Protection Fund shall be governed and managed through the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 and Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for Offices and Officers) Rules, 2016.

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.

Other provisions

The Companies Act, 2013 lays down certain other provisions for declaration of dividend, which are:

- (I) The provisions contained in Chapter III, Chapter IV and in Section 127 shall, in so far related to non – payment of dividend by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf; or in any other case, be administered by the Central Government. [Section 24]
- (II) The Share capital of the company may consist of equity shares with differential rights as to dividend. [Section 43]

A clause in the memorandum fixing the limit of dividends to be declared on a particular class of shares cannot be regarded as a condition within the meaning of the word in section 16(1), and it can be altered *Re, Rampuria Cotton Mills Ltd. (1959) 29 Com Cases 85 (Cal).*

In *British India Corporation Ltd. v Shanti Narain AIR 1935 All 310*, it was held with reference to Section 10 of Indian Companies Act, 1913 (corresponding to the present section): “The provisions as regards the rights and privileges attaching to particular class of shares are not required by the Statute to be inserted in the memorandum of a company, but if they are stated in the memorandum without the reservation of the power to modify or alter those rights and privileges, they cannot be altered in view of the provisions of section 10 of the Act, except in the mode and to the extent for which express provision is made in the Act”.

- (III) Preference share capital would carry a preferential right with respect to payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax. [Section 43]
- (IV) Where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company. [Section 47]
- (V) A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share. [Section 51] This Section permits companies to pay dividends proportionately, *i.e.* in proportion to the amount paid-up on each share when all shares are not uniformly paid up, *i.e. pro rata*. *Pro rata* means in proportion or proportionately, according to a certain rate. The Board of Directors of a company may decide to pay dividends on *pro rata* basis if all the equity shares of the company are not equally paid-up. The permission given by this section is, however, conditional upon the company's articles of association expressly authorising the company in this regard.
- (VI) The bonus shares shall not be issued in lieu of dividend. [Section 63(3)]
- (VII) Final Dividend is generally declared at an annual general meeting at a rate not more than what is recommended by the directors in accordance with the articles of association of a company [Section 102(2)(a)(ii)].
- (VIII) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include the amount, if any, which it recommends should be paid by way of dividend. [Section 134(3)(k)]
- (IX) The company's lien, if any, on a share shall extend to all dividends payable and bonuses declared from time to time in respect of such shares. [Schedule I, Table F, Article 9(ii)]
- (X) A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends [Schedule I, Table F, Article 26]
- (XI) The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. [Schedule I, Table F, Article 80]
- (XII) The Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company. [Schedule I, Table F, Article 81]
- (XIII) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks fit as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, think fit.
The Board may also carry forward any profits which it may consider necessary not to divide, without setting them aside as a reserve. [Schedule I, Table F, Article 82]
- (XIV) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid;

but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly. [Schedule I, Table F, Article 83]

- (XV) The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company. [Schedule I, Table F, Article 84]
- (XVI) Any dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. [Schedule I, Table F, Article 85]
- (XVII) Any one of two or more joint holders of a share may give effective receipts for any dividends, bonuses or other monies payable in respect of such share. [Schedule I, Table F, Article 86]
- (XVIII) Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act. [Schedule I, Table F, Article 87]
- (XIX) No dividend shall bear interest against the company. [Schedule I, Table F, Article 88]

PROCEDURE FOR DECLARATION AND PAYMENT OF INTERIM DIVIDEND

1. Verify from company's Articles of Association that they authorise the directors to declare interim dividend; if not then alter the Articles of Association accordingly.
2. Issue notice for holding a meeting of the Board of directors of the company to consider the matter. The notice must be in accordance. It must state time, date and venue of the meeting and details of the business to be transacted thereat and be sent to all the directors for the time being in India and to all other directors, at their usual address in India.
3. In case of listed companies, notify Stock exchange(s) where the securities of the company are listed, at least 2 working days in advance of the date of the meeting of its Board of Directors at which the recommendation of interim dividend is to be considered. [Regulation 29 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].
4. At the Board meeting, the Board of Directors considers in detail all the matters with regard to the declaration and payment of an interim dividend including:
 - (a) Before declaring an interim dividend, the directors must satisfy themselves that the financial position of the company allows the payment of such a dividend out of profits available for distribution. The company must have earned adequate profits to pay interim dividend after providing for depreciation for the full year. The directors of a company may be held personally liable in the event of wrong declaration of an interim dividend. Therefore, it is prudent on the part of the directors to have a proforma profit and loss account and balance sheet of the company prepared upto the latest possible date of the financial year in respect of which interim dividend is proposed to be declared and provision must be made for all the working expenses and depreciation for the whole year. In case, a company is incurring loss as per financials of latest quarter, interim dividend shall not be higher than average dividend declared by the company during last three financial years.
 - (b) quantum of dividend,
 - (c) entitlement,
 - (d) closure of register of members for the purpose of payment of interim dividend or fixation of record date,

- (e) publication of notice in newspapers for closure of share transfer register and the register of members of the company at least 7 days before the proposed closure (applicable for listed companies)
- (f) opening of a separate bank account,
- (g) printing of dividend warrants,
- (h) authority for signing the dividend warrants and pass appropriate resolutions covering all these aspects of the matter,
- (i) posting of the dividend warrants, and
- (j) pass a suitable resolution for declaration and payment of interim dividend on equity shares of the company.
- (k) *Interim dividend on preference shares*: Generally, dividend on preference shares is paid annually.

However, the dividend at a fixed rate on the preference shares can be paid more than once during a year, in proportion to the period of completion of current financial period over the whole financial year, by declaring it as interim dividend, in the Board meeting by the Board of directors. A suitable resolution should be passed to the effect that the dividend will be paid to the registered preference share holders whose names appear in the register of preference shareholders as on the date of commencement of closure of share transfer books.

[For a specimen of the Board resolution for interim dividend on preference shares, please see Annexure II at the end of this Chapter].

5. In case of a listed company, immediately within 30 minutes of the conclusion of the Board meeting, but only after the close of the market hours, intimate the stock exchanges with regard to the Board's decision about declaration and payment of interim dividend with the prescribed financial information is also required to be given to the concerned stock exchange(s) by a letter or telegram/telex. [Regulation 30 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].
6. In case of listed company, publish notice of book closure in a newspaper circulating in the district in which the registered office of the company is situated at least seven days before the date of commencement of book closure.

Further, :

- (i) To give notice of book closure to the stock exchange at least 7 working days or as many days as the stock exchange may prescribe, before the closure of transfer books or record date, stating the dates of closure of its transfer books/record date.
 - (ii) To send the copies of notice stating the date of closure of the register of transfers or record date, and specifying the purpose for which the register is closed or the record date is fixed, to other recognised stock exchanges.
 - (iii) Time gap between two book closures and record date would be at least 30 days.
 - (iv) To declare and disclose the dividend on per share basis only.
7. Close the register of members and the share transfer register of the company.
 8. Hold a Board/committee meeting for approving registration of transfer/ transmission of the shares of the company, which have been lodged with the company prior to the commencement of book closure. In compliance with the Board resolution, register transfer/transmission of shares lodged with the company prior to the date of commencement of the closure of the register of members and mail the share certificates to the transferees after endorsing the shares in their names.

9. Round off the amount of interim dividend to the nearest rupee and where such amount contains part of a rupee consisting of paise then if such part is fifty paise or more, it should be increased to one rupee and if such part is less than fifty paise, it should be ignored.
10. Open the "Interim Dividend Account of Ltd." with the bank as resolved by the Board and deposit the amount of dividend payable in the account within five days of declaration and give a copy of the Board resolution containing instructions regarding opening of the account and give the authority to Bank to honour the dividend warrants when presented.
11. If the company is listed, then for payment of dividend it has to mandatorily use, either directly or through its Registrars to an Issue and Share Transfer Agent (RTI & STA), any RBI (Reserve Bank of India) approved electronic mode of payment such as Electronic Clearing Services (ECS) [LECS (Local ECS) / RECS (Regional ECS) / NECS (National ECS)], National Electronic Fund Transfer (NEFT), etc. In order to enable usage of electronic payment instruments, the company (or its RTI & STA) shall maintain requisite bank details of its investors as under-
 - (a) For investors that hold securities in demat mode, company or its RTI & STA shall seek relevant bank details from the depositories. To this end, vide circular SEBI/MRD/DEP/Cir-3/06 dated February 21, 2006 and letter MRD/DEP/PP/123624/2008 dated April 23, 2008, depositories have been advised to ensure that correct account particulars of investors are available in the database of depositories.
 - (b) For investors that hold physical share / debenture certificates, company or its RTI & STA shall take necessary steps to maintain updated bank details of the investors at its end.
 - (c) In cases where either the bank details such as MICR (Magnetic Ink Character Recognition), IFSC (Indian Financial System Code), etc. that are required for making electronic payment are not available or the electronic payment instructions have failed or have been rejected by the bank, company or its RTI & STA may use physical payment instruments for making cash payments to the investors. Company shall mandatorily print the bank account details of the investors on such payment instruments.
 - (d) Depositories are directed to provide to companies (or to their RTI & STA) updated bank details of their investors. [Refer SEBI Circular No. CIR/MRD/DP/10/2013 dated March 21, 2013]
12. Make arrangements with the bank and in collaboration with other banks if required, for payment of the Dividend Warrants at par at the centers as determined by the Stock Exchanges in case of listed company. [Clause 21 of listing agreement]
13. Prepare a statement of dividend in respect of each shareholder containing the following details:
 - (a) Name and address of the shareholder with ledger folio No.
 - (b) No. of shares held.
 - (c) Dividend payable.
14. Ensure that the dividend tax is paid to the tax authorities within the prescribed time.
15. To have sufficient number of dividend warrants printed in consultation with the company's banker appointed for the purpose of dividend. To get approval of the RBI for printing the warrants with MICR facility. Get the dividend warrants filled in and signed by the persons authorised by the Board.
16. No RBI approval is required for payment of dividend to shareholders abroad, in case of investment made on repatriation basis.
17. Prepare two copies of the list of members with names and addresses only for mailing purposes – one to cut and paste on envelopes which could even be printed on self sticking labels and the other for securing receipt from the Post Office.

18. Where an instrument of transfer has been received by company prior to book closure but transfer of such shares has not been registered when the dividend warrants were posted, then keep the amount of dividend in special A/c called "Unpaid Dividend Account" opened unless the registered holder of these shares authorises company in writing to pay dividend to the transferee specified in the said instrument of transfer.
19. Dispatch dividend warrants within thirty days of the declaration of dividend. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.
20. Send sufficient number of cancelled dividend warrant forms with MICR code allotted by the RBI, to the bank for circulation to the branches where the dividend warrants will be payable at par.
21. Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank.
22. Publish a Company notice in a newspaper circulating in the district in which the registered office of the company is situated to the effect that dividend warrants have been posted and advising those members of the company who do not receive them within a period of fifteen days, to get in touch with the company for appropriate action (in the case of listed companies, as a good practice).
23. Issue bank drafts and/or cheques to those members who inform that they received the dividend warrants after the expiry of their currency period or their dividend warrants were lost in transit after satisfying that the same have not been encashed.
24. Arrange for transfer of unpaid or unclaimed dividend to a special account named "Unpaid dividend A/c" within 7 days after expiry of the period of 30 days of declaration of final dividend. [Section 124]
25. Confirm the interim dividend in the next Annual General Meeting.

PROCEDURE FOR DECLARATION AND PAYMENT OF FINAL DIVIDEND

The following steps are required to be taken by a company in respect of declaration and payment of final dividend:

1. Issue notice for holding a meeting of the Board of directors of the company to consider the matter. It must contain time, date and venue of the meeting and details of the business to be transacted thereat and must be sent to all the directors for the time being in India and to all other directors, at their usual address in India.
2. In case of listed companies notify stock exchange(s) where the securities of the company are listed, at least 2 working days in advance of the date of the meeting of its Board of Directors at which the recommendation of final dividend is to be considered. [Regulation 29 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].
3. Hold Board meeting for the purpose of passing the following resolutions:
 - (a) approving the annual accounts (balance sheet and profit and loss account of the company for the year ended on 31st March);
 - (b) recommending the quantum of final dividend to be declared at the next annual general meeting and the source of funds for the payment thereof, i.e.:
 - (i) out of profits of the company after providing for depreciation for the current financial year and also for earlier years, if not already provided and amount to be transferred from the current profits to reserves; or
 - (ii) out of reserves in accordance with the provisions of Rule 3 of the Companies (Declaration and Payment of Dividend), Rules, 2014.

- (c) fixing time, date and venue for holding the next annual general meeting of the company, *inter alia*, for declaration of dividend recommended by the Board;
- (d) approving notice for the annual general meeting and authorising the company secretary or any competent person if company does not have a company secretary to issue the notice of the AGM on behalf of the Board of directors of the company to all the members, directors and auditors of the company and other persons entitled to receive the same.
- (e) determining the date of closure of the register of members and the share transfer register of the company as per requirements of Section 91 of the Companies Act and the listing agreements (in the case of listed companies) signed by the company with the stock exchanges where the securities of the company are listed. In the case of listed companies, the date of commencement of closure of the transfer books should not be on a day following a holiday. The dates so fixed should also not clash with the clearance programme in the stock exchanges. It is advisable to consult in advance the regional stock exchange and then fix the dates for closure of books.

(A Specimen of Board resolution recommending dividend is given at Annexure IV)

5. The company may transfer to reserves such percentage as it consider appropriate of the current profits.
6. In case of a listed company, immediately within 30 minutes of the conclusion of the Board meeting, intimate the stock exchanges with regard to the Board's decision about declaration and payment of dividend and the amounts appropriated from reserves, capital profits, accumulated profits of past years or other special source to provide wholly or partly for the dividend, by way of a letter or telegram/fax [Regulations 29 and 30]
7. Publish notice of book closure in a newspaper circulating in the district in which the registered office of the company is situated at least seven days before the date of commencement of book closure.

In case of listed companies:

- (i) To give notice of book closure to the stock exchange at least 7 working days or as many days as the stock exchange may prescribe, before the closure of transfer books or record date, stating the dates of closure of its transfer books/record date.
 - (ii) To send the copies of notice atleast 7 working days in advance. Stating the date of closure of the register of transfers or record date, and specifying the purpose for which the register is closed or the record date is fixed, to other recognised stock exchanges. [Regulation 42 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].
 - (iii) Time gap between two book closures would be at least 30 days [Regulation 42(4) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].
8. To declare and disclose the dividend on per share basis only. The listed entity shall not forfeit unclaimed dividends before the claim becomes barred by law and such forfeiture of effected, shall be annulled in appropriate cases. (Regulation 43 of Listing Regulations read with section 51 of Companies Act, 2013).
 9. "Regulation 43A of SEBI Listing Regulation provided that the top five hundred listed entities based on market capitalization (calculated as on March 31 of every financial year) shall formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites. The dividend distribution policy shall include the following parameters:
 - (a) the circumstances under which the shareholders of the listed entities may or may not expect dividend;
 - (b) the financial parameters that shall be considered while declaring dividend;

- (c) internal and external factors that shall be considered for declaration of dividend;
- (d) policy as to how the retained earnings shall be utilized; and
- (e) parameters that shall be adopted with regard to various classes of shares:

Provided that if the listed entity proposes to declare dividend on the basis of parameters in addition to clauses (a) to (e) or proposes to change such additional parameters or the dividend distribution policy contained in any of the parameters, it shall disclose such changes along with the rationale for the same in its annual report and on its website.

The listed entities other than top five hundred listed entities based on market capitalization may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites.”

10. Close the register of members and the share transfer register of the company.
11. The amount of dividend as recommended by the Board of directors shall be shown in the Directors' Report as appropriation of profits for the financial year to which the Report relates. The same amount is shown in the Balance Sheet as at the end of the related financial year as "Proposed Dividend" under the head "Current Liabilities & Provisions", Sub-head "Provisions".
12. Hold a Board/committee meeting for approving registration of transfer/ transmission of the shares of the company, which have been lodged with the company prior to the commencement of book closure. In compliance with the Board resolution, register transfer/transmission of shares lodged with the company prior to the date of commencement of the closure of the register of members and mail the share certificates to the transferees after endorsing the shares in their names.
13. Hold the annual general meeting and pass an ordinary resolution declaring the payment of dividend to the shareholders of the company as per recommendation of the Board. The shareholders cannot declare the final dividend at a rate higher than the one recommended by the Board. However, they may declare the final dividend at a rate lower than the one recommended by the Board. The following should be noted in this regard:
 - (a) Once a company has declared a dividend for a financial year at an annual general meeting, it cannot declare further dividend at an extraordinary general meeting in relation to the same financial year; it is beyond the powers of the company to do so, although the Companies Act does not prohibit the declaration of a dividend at a general meeting other than an annual general meeting.
 - (b) *Pro-rata* means in proportion or proportionately, according to a certain rate. It denotes a method of dividing something between a number of participants in proportion to some factor. The profits of a company are shared, *pro rata*, among the shareholders, *i.e.* in proportion to the number of shares each shareholder holds.
 - (c) In the case of preference shares, dividend is always paid at a fixed rate. However, in the case of equity shares, a dividend must be declared and paid according to the amounts paid or credited as paid on the shares, *i.e.*, according to the paid-up value of the shares.
 - (d) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly. [Schedule I, Table F, Article 83(3)].
14. Prepare a statement of dividend in respect of each shareholder containing the following details:
 - (a) Name and address of the shareholder with ledger folio no.

(b) No. of shares held.

(c) Dividend payable.

15. Ensure that the dividend tax is paid to the tax authorities within the prescribed time.
16. Round off the amount of interim dividend to the nearest rupee and where such amount contains part of a rupee consisting of paise then if such part is fifty paise or more it should be increased to one rupee and if such part is less than fifty paise it should be ignored.
17. Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within five days of declaration of dividend.
18. If the company is listed, then for payment of dividend it has to mandatorily use, either directly or through its Registrars to an Issue and Share Transfer Agent (RTI & STA), any RBI (Reserve Bank of India) approved electronic mode of payment such as Electronic Clearing Services (ECS) [LECS (Local ECS)/ RECS (Regional ECS) / NECS (National ECS)], National Electronic Fund Transfer (NEFT), etc. In order to enable usage of electronic payment instruments, the company (or its RTI & STA) shall maintain requisite bank details of its investors as per SEBI Circular No. CIR/MRD/DP/10/2013 dated March 21, 2013 in the manner as stated aforesaid under the procedure for declaration and payment of interim dividend.
19. To have sufficient number of dividend warrants printed in consultation with the company's banker appointed for the purpose of dividend. To get approval of the RBI for printing the warrants with MICR facility. Get the dividend warrants filled in and signed by the persons authorised by the Board.
20. No RBI approval required for payment of dividend to shareholders abroad, in case of investment made on repatriation basis.
21. Prepare two copies of the list of members with names and addresses only for mailing purposes – one to cut and paste on envelopes which could even be printed on self sticking labels and the other for securing receipt from the Post Office.
22. Where an instrument of transfer has been received by company prior to book closure but transfer of such shares has not been registered when the dividend warrants were posted, then keep the amount of dividend in special A/c called "Unpaid Dividend Account" unless the registered holder of these shares, authorises company in writing to pay dividend to the transferee specified in the said instrument of transfer. (Section 206A)
23. Dispatch dividend warrants within thirty days of the declaration of dividend. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.
24. Send sufficient number of cancelled dividend warrant forms with MICR code allotted by the RBI, to the bank or circulation to the branches where the dividend warrants will be payable at par.
25. Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank.
26. Publish a Company notice in a newspaper circulating in the district in which the registered office of the company is situated to the effect that dividend warrants have been posted and advising those members of the company who do not receive them within a period of fifteen days, to get in touch with the company for appropriate action (in the case of listed companies, as a good practice).
27. Issue bank drafts and/or cheques to those members who inform that they received the dividend warrants after the expiry of their currency period or their dividend warrants were lost in transit after satisfying that the same have not been encashed.

28. Arrange for transfer of unpaid or unclaimed dividend to a special account named “Unpaid dividend A/c” within 7 days after expiry of the period of 30 days of declaration of final dividend.

DECLARATION OF DIVIDEND OUT OF RESERVES

Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 makes rules for declaration of dividend out of reserve.

In the event of adequacy or absence of profits in any year, a company may declare dividend out of surplus subject to the fulfillment of the following conditions, namely :

- (1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year. However, this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.
- (2) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
- (3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
- (4) The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.

The procedure is as follows:

- (1) Give notice to all the directors of the company for holding a Board meeting. In the meeting, take decision to declare dividend out of company's reserves because of inadequacy or absence of profits and also fix the date, time and place of the Annual General Meeting. Authorise the Company Secretary or any competent person if company does not have a company secretary to issue the notice of the AGM on behalf of the Board of directors of the company to all the members, directors and auditors of the company and other persons entitled to receive the same.
- (2) Ensure that the Companies (Declaration and Payment of Dividend) Rules 2014 are complied with.
- (3) While calculating the profits of the previous years, take only the net profit after tax.
- (4) Ensure that while computing the amount of profits, the amount transferred from the Development Rebate Reserve is included and all items of capital reserves including reserves created by revaluation of assets are excluded.
- (5) In the case of listed companies, inform the Stock Exchange with which the shares of the company are listed within 30 minutes of closure of Board meeting about decision to recommend declaration of dividend out of Company's Reserves. [Regulation 30 of SEBI (LODR) Regulations, 2015].
- (6) Issue notices in writing at least 21 days before the date of the Annual General Meeting and hold the meeting and pass the necessary resolution.
- (7) In the case of listed companies, forward copies of the notice and a copy of the proceeding of the general meeting to the Stock Exchange.
- (8) Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within five days of declaration of dividend.
- (9) Issue dividend warrants within 30 days from the date of declaration of dividend. Rest of the procedural steps are same as in case of payment of final dividend.

CLAIMING OF UNCLAIMED/UNPAID DIVIDEND

In accordance with Section 124, a dividend which has been declared by a company but has not been paid, or claimed, within thirty days from the date of the declaration, to/by any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of thirty days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called "Unpaid Dividend Account of Company Limited/Company (Private) Limited".

Under the explanation, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. The person can claim this amount from company only within seven years of its transfer to Unpaid Dividend Account. After this period not only his dividend amount but also shares shall be transferred to the Investor Education and Protection Fund (IEPF).

PROCEDURE FOR TRANSFER OF UNPAID OR UNCLAIMED DIVIDEND TO THE INVESTOR EDUCATION AND PROTECTION FUND

Any money transferred to the Unpaid Dividend Account of a company in pursuance of Section 124 which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund and the company shall send a statement in the prescribed form of the details of such transfer to the Investor Education and Protection Fund Authority and it shall issue a receipt to the company as evidence of such transfer.

- (1) Every company shall within a period of ninety days after holding of the Annual General Meeting or the date on which it should have been held as per the provisions of section 96 of the Act and every year thereafter till completion of the seven years period, identify the unclaimed dividend, as on the date of holding of Annual General Meeting or the date on which it should have been held as per the provisions of section 96 of the Act, separately furnish and upload on its own website and also on website of Authority or any other website as may be specified by the Government, a statement or information through **Form No. IEPF-2**, separately for each year, containing following information, namely:-
 - (a) the names and last known addresses of the persons entitled to receive the sum;
 - (b) the nature of amount;
 - (c) the amount to which each person is entitled;
 - (d) the due date for transfer into the Investor Education and Protection Fund; and
 - (e) such other information as may be considered relevant for the purposes.
- (2) The amount of unclaimed or unpaid dividend required to be credited by the companies to the Fund shall be remitted into the specified branches of Punjab National Bank, which is the accredited Bank of the Pay and Accounts Office, Ministry of Corporate Affairs and other authorised banks engaged by the MCA-21 system, within a period of thirty days of such amounts becoming due to be credited to the Fund.
- (3) The amount shall be tendered by the (3) companies along with challan (in triplicate) to the specified Bank Branches of Punjab National Bank and other authorised banks under MCA-21 system who will return

two copies of the challan, duly stamped in token of having received the amount, to the Company. The third copy of the challan will be forwarded along with the daily credit scroll by the receiving branch to its Focal Point Branch of the Bank for onward transmission to the Pay and Accounts Office, Ministry of Corporate Affairs.

- (4) Every company shall file with the concerned Authority one copy of the challan referred to in point (3) indicating the deposit of the amount to the Fund and shall fill in the full particulars of the amount tendered, including the head of account to which it has been credited.
- (5) The company shall, along with the copy of the challan as required under point (4), furnish a Statement in **Form No. IEPF 1** containing details of such transfer to the Authority within thirty days of submission of challan.
- (6) The amount may also be remitted by Electronic Fund Transfer in such manner, as may be specified by the Central Government.
- (7) On receipt of the statement, the Authority shall enter the details of such receipt in a Register maintained physically or electronically by it in respect of each company every year, and reconcile the amount so remitted and collected, with the concerned designated bank on monthly basis.
- (8) Each designated bank shall furnish an abstract of such receipts during the month to the Authority within seven days after the close of every month.
- (9) The company shall maintain record consisting of name, last known address, amount, folio number or client ID, certificate number, beneficiary details etc. of the persons in respect of whom unpaid or unclaimed amount has remained unpaid or unclaimed for a period of seven years and has been transferred to the Fund and the Authority shall have the powers to inspect such records.

PROCEDURE FOR TRANSFER OF SHARES TO THE INVESTOR EDUCATION AND PROTECTION FUND

- (1) The money which remains unpaid or unclaimed for a period of 7 years from the date of transfer to the unpaid dividend account be transferred to the Investor Education Protection Fund within a period of 30 days of such amounts becoming due to be credited to the Fund;
- (2) Company shall file a statement of the details of such transfer to the IEPF Authority in **Form IEPF-1** and the authority shall issue a receipt to the company as evidence of such transfer [Rule 5 read with Section 124(5)].
- (3) All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of IEPF along with a statement in **IEPF Form-4**.
- (4) The shares shall be credited to DEMAT Account of the Authority to be opened by the Authority for the said purpose, within a period of 30 days of such shares becoming due to be transferred to the Fund.
- (5) However, in case the beneficial owner has encashed any dividend warrant during the last seven years, such shares shall not be required to be transferred to the Fund even though some dividend warrants may not have been encashed.
- (6) Further, in cases where the period of seven years provided under sub-section (5) of section 124 has been completed or being completed during the period from 7th September, 2016 to 31st May, 2017, the due date of transfer of such shares shall be deemed to be 31st May, 2017.
- (7) Board shall authorise the Company Secretary or any other person to sign the necessary documents for effecting transfer of such shares.
- (8) The company shall follow the following procedure while transferring the shares:-

- (a) The company shall inform the shareholder concerned regarding transfer of shares three months before the due date of transfer of shares and also simultaneously publish a notice in the leading newspaper in English and regional language having wide circulation informing the concerned that the names of such shareholders and their folio number or DP ID - Client ID are available on their website duly mentioning the website address.
- (b) Where there is a specific order of Court/Tribunal/statutory Authority restraining any transfer of such shares and payment of dividend or where such shares are pledged or hypothecated or shares already been transferred under point (4) above, the company shall not transfer such shares to the Fund and the company shall furnish details of such shares and unpaid dividend to the Authority in **IEPF Form -3** within 30 days from the end of financial year.
- (c) For effecting the transfer of shares that are dealt with in a depository (in dematerialized form):
 - Company shall inform depository by way of corporate action, where the shareholders have their accounts for transfer in favour of the Authority;
 - on receipt of such intimation, the depository shall effect the transfer of shares in favour of DEMAT account of the Authority;
- (d) For effecting transfer of shares that are held in physical form-
 - Company Secretary or the person authorised by the Board to make an application, on behalf of the concerned shareholders, to the company, for issue of duplicate share certificates;
 - On receipt of such application, a duplicate certificate for each such shareholder shall be issued and it shall be stated on the face of it and be recorded in the register maintained for that purpose, that the duplicate certificate is “Issued in lieu of share certificate No..... for purpose of transfer to IEPF” and the word “duplicate” shall be stamped or punched in bold letters on the first page of the share certificate;
 - Particulars of every share certificate issued shall be entered forthwith in a register of renewed and duplicate share certificates maintained in **Form No. SH-2**;
 - After issue of duplicate share certificates, company to inform the depository by way of corporate action to convert the duplicate share certificates into DEMAT form and transfer in favour of the Authority.
- (9) Company shall make such transfers through corporate action and preserve copies for its records;
- (10) Company shall send a statement to the Authority in **IEPF Form-4** containing details of such transfer;
- (11) Voting rights on shares transferred to the Fund shall remain frozen until the rightful owner claims the shares by making an application to the Authority;
 - However, for the purpose of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the Authority shall not be excluded while calculating the total voting rights.
- (12) The company shall maintain the details of shareholding of each individual shareholders whose shares have been credited to the DEMAT account of the Authority;
- (13) All benefits accruing on such shares e.g., bonus shares, split, consolidation, fraction shares etc., except right issue also to be credited to such DEMAT account;
- (14) The shares held in such DEMAT account shall not be transferred or dealt with in any manner whatsoever except for the purposes of transferring the shares back to the claimant as and when he approaches the Authority;

- (15) If the company is getting delisted, the Authority shall surrender shares on behalf of the shareholders in accordance with the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 and the proceeds realised shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.
- (16) In case the company whose shares or securities are held by the Authority is being wound up, the Authority may surrender the securities to receive the amount entitled on behalf of the security holder and credit the amount to the Fund and a separate ledger account shall be maintained for such proceeds.
- (17) Any further dividend received on such shares shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.
- (18) Any person whose shares, unclaimed dividend, matured deposits, matured debentures, application money due for refund, or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares etc., has been transferred to the Fund, may claim the shares or apply for refund, to the Authority by submitting an online application in **Form IEPF-5** along with fee. [Rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016]

ANNEXURES

SPECIMEN OF BOARD RESOLUTION FOR DECLARATION OF INTERIM DIVIDEND ON EQUITY SHARES

RESOLVED THAT an interim dividend of Rs. 2 (Rupees two) only on each fully paid no. of equity shares of Rs. 10 (Rupees ten) each of the company amounting to Rs..... be paid out of the profits of the company for the half year ended 2014 to those members of the company whose names would appear on the register of members of the company on the day of, 2014.

RESOLVED FURTHER THAT a bank account to be designated as “Interim Equity Dividend (2015) Account of Limited” be opened in the name of the company with Bank at its Branch at and a sum of Rs....., being the total interim dividend amount, be deposited in the said account within five days.

RESOLVED FURTHER THAT Shri, Managing Director and Shri, the Company Secretary be and are hereby authorised to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents, information etc. and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the interim dividend within thirty days from the date of this resolution.

RESOLVED FURTHER THAT Shri, Managing director and Shri, Company Secretary of the company for the time being, be and are hereby authorised to jointly sign the dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the interim dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment.

SPECIMEN OF BOARD RESOLUTION FOR DECLARING INTERIM DIVIDEND ON PREFERENCE SHARES

RESOLVED THAT dividend at the fixed rate of 8 per cent per annum on the (no. of shares) cumulative redeemable preference shares of Rs. 100 each of the company, for the six months commencing from July 1, 2014 and ending on December 31, 2014..... aggregating Rs., be paid to the registered holders thereof whose names would appear on the register of holders of the said shares on the 2014, the date of commencement of the closure of the share transfer books of the company.

RESOLVED FURTHER THAT a bank account to be designated as “Interim Preference Dividend (2015) Account of Limited” be opened in the name of the company with Bank at its Branch at and a sum of Rs., being the total interim dividend amount, be deposited in the said account.

RESOLVED FURTHER THAT Shri, Managing Director and the Company Secretary, Shri, be and is hereby authorised to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents, information etc. and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the interim dividend within 30 days from the date of this resolution.

RESOLVED FURTHER THAT Shri....., Managing director and Shri....., Company Secretary of the company for the time being, be and are hereby authorised to jointly sign the dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the interim dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment.

NOTICE OF BOOK CLOSURE

Name of Company:

Registered Office:

Notice

Pursuant to Section 91 of the Companies Act, 2013 and the applicable clauses of the Listing Agreement, notice is hereby given that the register of members and the share transfer register of the company will remain closed, for the purpose of payment of interim dividend/final dividend, from theth day of (month), 2014 to theth day of 2015 (both days inclusive).

Members of the company are requested to intimate to the company at its registered office above, their latest postal addresses, where the interim dividend warrants may be sent by the company.

Place:.....

For Limited

Date:.....

(.....)

Company Secretary

Note for publication

Messrs

Advertising Agents,

New Delhi-110 001.

Please arrange for the publication of the above company notice in the earliest editions of,

English daily newspaper and, Hindi daily newspaper, not later than theth day of, 2014. Kindly ensure that the Hindi newspaper must carry the notice in Hindi language after it is appropriately translated into Hindi.

For Limited

Date:.....

(.....)

Company Secretary

SPECIMEN OF BOARD RESOLUTION RECOMMENDING PAYMENT OF DIVIDEND ON EQUITY SHARES OUT OF CURRENT PROFITS

“RESOLVED THAT in accordance with the provisions of Section 123 and other applicable provisions, if any, of the Companies Act, 2013 and the Companies (Declaration and Payment of Dividend) Rules, 2014, the Board of directors of the company do hereby recommend a dividend at the rate of Rs per equity share out of the current profits of the company for the year ended on 31st March 2014 on the fully paid equity shares of the company absorbing Rs. out of the profits of the year and that, subject to the declaration by the members of the company at the ensuing annual general meeting, such dividend be paid to the registered holders of the equity shares whose names would appear on the register of members on 2014.”

SPECIMEN EXTRACTS OF MINUTES CONTAINING THE BOARD RESOLUTION FOR RECOMMENDING DECLARATION OF DIVIDEND OUT OF RESERVES

The Chairman informed the meeting that the profits of the current year, i.e. the financial year ended on the 31st March, 2014 are inadequate for payment of a reasonable amount of dividend to the members of the company.

He further informed that the free reserves of the company do, however, permit the distribution of dividend not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year.

The directors considered the matter and passed the following resolution:

RESOLVED THAT the Board of directors of the company do hereby recommend to the members of the company, the declaration and payment of a dividend at the rate of ten per cent on all the fully paid equity shares of the company out of the free reserves of the company that stood in the books of the company on 2014 absorbing a total of `, with due compliance of the Companies (Declaration and Payment of Dividend) Rules, 2014, and that, subject to the declaration by the members at the forthcoming annual general meeting, to the holders of the equity shares whose names will appear on the register of members on 2014.

LESSON ROUND-UP

- The amount of the dividend payment is determined by the Board of directors of a company, who decide the amount to be paid to shareholders and the amount of profit to be retained in the business; these amounts may vary from year to year. This is called 'recommendation of dividend'.
- Dividend is calculated as a percentage of the nominal value of a share, which is fixed for holders of preference shares and fluctuating for holders of equity shares. The preference shareholders have the right to receive dividend before the ordinary shareholders.
- The Board recommends dividends on preference shares and equity shares by passing a resolution at a duly convened meeting at which Balance Sheet and Profit & Loss Account are approved.
- Dividend recommended by the Board must be 'declared' at the annual general meeting of the company. Declaration of dividend constitutes an item of ordinary business to be transacted at every annual general meeting. This declaration is done by passing at an annual general meeting an ordinary resolution (unless the articles of association of the company require a special resolution).
- The amount to be transferred to the General Reserves would be worked out in respect of the profits of the year in question and without bringing in the profits of the past years.
- The Investor Protection Fund has been instituted in the year 2001 with the object of promoting awareness among investors regarding matters which concern them and also for protection of their interests. The main sources of funds in this are dividends (including interim dividends), application moneys, matured deposits and debentures lying unclaimed for seven years. Additionally, it may receive grants from the government or institutions and also earn interest on and income out of investments made from the Fund.
- Once unclaimed dividends have been transferred to the Fund, the same cannot be claimed by a shareholder or by his legal heir.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)

1. Define the term 'dividend'. State briefly the provisions in the Companies Act, 2013 for the declaration of dividend?
2. Draft a resolution for payment of dividend on preference shares.
3. Draft a notice for closure of the register of members and share transfer register.

Lesson 14

Charges

LESSON OUTLINE

- Definition and kinds of charge
- Distinction between charge, mortgage and pledge
- Duty to register charges
- Verification of Charges
- Register of Charges
- Procedure for registration of creation/ modification satisfaction charge
- Necessary Resolutions
- Annexures – Specimen Resolution
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

A charge is a right created by any person including a company referred to as “the borrower” on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as “the lender”, which has agreed to extend financial assistance.

According to section 77 of Companies Act, 2013 a charge base to be registered within 30 days of its creation. The Registrar has the power to condone the delay upto 300 days, and the Central Government condone beyond 300 days.

After reading this lesson you should be able to understand procedural aspects relating to creation, registration, modification and satisfaction of charges by the companies under Companies Act, 2013.

WHAT IS A CHARGE

A charge is a right created by any person including a company referred to as “the borrower” on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as “the lender”, which has agreed to extend financial assistance.

Section 2(16) of the Companies Act, 2014 defines charges so as to mean an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

The following are the essential features of the charge which are as under:

1. There should be two parties to the transaction, the creator of the charge and the charge holder.
2. The subject-matter of charge, which may be current or future assets and other properties of the borrower.
3. The intention of the borrower to offer one or more of its specific assets or properties as security for repayment of the borrowed money together with payment of interest at the agreed rate should be manifested by an agreement entered into by him in favour of the lender, written or otherwise.

A charge may be fixed or floating depending upon its nature.

“Charge” as defined in Transfer of Property Act, 1882

According to Section 100 of the Transfer of Property Act, 1882, where immovable property of one person is by act of parties or operation of law made security for the payment of money to another; and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions which apply to a simple mortgage shall, so far as may be, apply to such charge.

WHAT IS A MORTGAGE?

A mortgage is a legal process whereby a person borrows money from another person and secures the repayment of the borrowed money and also the payment of interest at the agreed rate, by creating a right or charge in favour of the lender on his movable and/or immovable property.

Mortgage as defined in Transfer of Property Act, 1882

According to Section 58 of the Transfer of Property Act, a mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to pecuniary liability.

CHARGE AND MORTGAGE DISTINGUISHED

There is a clear distinction between a mortgage and a charge, the former being a transfer of an interest in immoveable property as a security for the loan whereas the latter is not a transfer, though it is nonetheless a security for the payment of an amount.

A mortgage deed includes every instrument whereby for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, one person transfers, or creates in favour of another, a right over a specified property.

CHARGE AND PLEDGE DISTINGUISHED

According to the generally accepted definition, a ‘pledge’ is a bailment of personal property as security for some debt or engagement, redeemable on certain terms, and with an implied power of sale on default. It consists of a

delivery of goods by a debtor to his creditor as security for a debt or other obligation, to be held until the debt is repaid along with interest or other obligation of the debtor is discharged, and then to be delivered back to the pledger, the title not being changed during the continuance of the pledge.

Unlike a pledge, a 'charge' is not a transfer of property of one to another. It is a right created in favour of one, referred to as "the lender" in the immovable property of another, referred to as "the borrower", as security for repayment of the loan and payment of interest on the terms and conditions contained in the loan documents evidencing charge.

Both a pledge and a charge are the result of voluntary act of parties. Both create security but the nature of the security is different.

NEED FOR CREATING A CHARGE ON COMPANY'S ASSETS

Almost all the large and small companies depend upon share capital and borrowed capital for financing their projects. Borrowed capital may consist of funds raised by issuing debentures, which may be secured or unsecured, or by obtaining financial assistance from financial institution or banks.

The financial institutions/banks do not lend their monies unless they are sure that their funds are safe and they would be repaid as per agreed repayment schedule along with payment of interest. In order to secure their loans they resort to creating right in the assets and properties of the borrowing companies, which is known as a charge on assets. This is done by executing loan agreements, hypothecation agreements, mortgage deeds and other similar documents, which the borrowing company is required to execute in favour of the lending institutions/banks etc.

As a matter of convenience and practice, as and when more funds are required by companies, they approach the same institutions/banks or certain new institutions/ banks and offer same assets as security for fresh loans. However, when the same assets are charged for a second and subsequent times, a very important question arises as to priority in respect of the charges in favour of different institutions. This situation is managed by securing consent of the earlier lending institutions to the creation of second and subsequent charges on the same assets. With their consents, the charges of all the lending institutions ranks *pari passu*, i.e. on the same footing.

However, the earlier lending institution may not give its consent to the creation of second charge on the ground that the realisable value of the asset charged in its favour is not adequate to cover its loan and as such it cannot share its right of charge with the lending institutions which seek second and subsequent charges.

The real question which alerts the lending institutions is how to ensure that the assets being offered as security for their proposed loans are not already encumbered.

DUTY TO REGISTER CHARGE

Primarily, under section 77 of the Companies Act, 2013 every company creating a charge shall register the particulars of charge signed by the company and its charge – holder together with the instruments creating. Important points in the Act relating to charge creation:

- Any charge created within or outside India
- on property or assets or any of the company's undertakings
- Whether tangible or otherwise, situated in or outside India
- Shall be registered.

Hence all types of charges are required under the Act to be registered whether created within or outside India.

Time limit for registration of a Charge

A charge created by a company is required to be registered with the Registrar within thirty days of its creation in such form and on payment of such fees as may be prescribed. According to Companies (**Registration of Charges**) Rules, 2014 e-forms prescribed for the purpose of creating or modifying the charge is **Form No.CHG-1** (for other than Debentures) or **Form No.CHG-9** (for debentures including rectification).

Condonation of delay by Registrar: The Registrar may on an application by the company allow registration of charge within three hundred days of creation or modification of charge on payment of additional fee. The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of thirty days of the date of creation of the charge, allow the registration of the same after thirty days but within a period of three hundred days of the date of such creation of charge or modification of charge on payment of additional fee. The application for delay shall be made in **Form No.CHG-1** and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

Condonation of delay by the Central Government: If company fails to register the charge even within this period of three hundred days, it may seek extension of time in accordance with Section 87 from the Central Government. The same has been discussed later in this chapter.

Application for registration of charge by the charge-holder : According to Section 78 where a company fails to register the charge within the period of thirty days referred to in sub-section (1) of [section 77](#), the person in whose favour the charge is created may apply to the Registrar for registration of the charge alongwith the instrument created for the charge in **Form No.CHG-1** or **Form No.CHG-9**, as the case may be, duly signed along with fee. The registrar may, on such application, give notice to the company about such application. The company may either itself register the charge or shows sufficient cause why such charge should not be registered. On failure on part of the company, the Registrar may allow registration of such charge within fourteen days after giving notice to the company. shall allow such registration.

Where registration is affected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company, the amount of any fee or additional fees paid by him to the Registrar for the purpose of registration of charge.

CERTIFICATE OF REGISTRATION OF CHARGE

Where a charge is registered with the Registrar, Registrar shall issue a certificate of registration of charge in **Form No.CHG-2** and for registration of modification of charge in **Form No.CHG-3** to the company and to the person in whose favour the charge is created.

The certificate issued by the Registrar whether incase of registration of charge or registration of modification, shall be conclusive evidence that the requirements of Chapter VI of the Act (Registration of Charges) and the rules made thereunder as to registration of creation or modification of charge, as the case may be, have been complied with.

Further the Act provides that no charge created by the company shall be taken into account by the liquidator appointed under this Act or the Insolvency and Bankruptcy Codes, 2016, as the case may be, or any other creditor unless it is duly registered and a certificate of registration is given by the Registrar. However, this does not prejudice any contract or obligation for the repayment of the money secured by a charge.

ACQUIRING PROPERTY UNDER CHARGE AND MODIFICATION OF CHARGE

Section 79 of the Act makes it clear that the requirement of registering the charge shall also apply to a company acquiring any property subject to charge or any modification in terms and conditions of any charge already registered.

It provides that the provisions of Section 77 relating to registration of charge shall apply to:

- (a) A company acquiring any property subject to a charge within the meaning of that section; or
- (b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

The provisions relating to condonation of delay shall apply, *mutatis mutandis*, to the registration of charge on any property acquired subject to such charge and modification of charge under section 79 of the Act.

VERIFICATION OF INSTRUMENTS

According to the rules, a copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar in pursuance of section 77, 78 or 79 shall be verified as follows-

- (a) where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;
- (b) where the instrument or deed relates, whether wholly or partly, to the property situated in India, the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

SATISFACTION OF CHARGES

According to section 82 read with the rules, the company shall give intimation to the Registrar of the payment or satisfaction in full of any charge within a period of thirty days from the date of such payment or satisfaction in **Form No. CHG-4** along with the fee. Where the satisfaction of the charge is not filed within thirty days from the date on which such payment or satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government, which is later discussed in this chapter.

[Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed.]

However, a Specified IFSC public and private company, the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.

On receipt of such intimation, the Registrar shall issue a notice to the holder of the charge calling a show cause within such time not exceeding fourteen days, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar. If no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges maintained by the registrar under section 81 and shall inform the company. If the cause is shown to the registrar shall record a note to that effect in the register of charges and shall inform the company accordingly.

However the aforesaid notice shall not be sent, in case intimation to the registrar is in specified form and is signed by the holder of charge.

Power of Registrar to Make Entries Of Satisfaction in absence of intimation from the company:

There may be times where a company may fail to send intimation of satisfaction of charge to the Registrar but according to section 83 of the Act, registrar may on receipt of satisfactory evidence of satisfaction register memorandum of satisfaction. The evidences may be –

- (a) The debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) Part of the property or undertaking charged has been released from the charge;
- (c) Part of the property or undertaking ceased to form part of the company's property or undertaking.

The Registrar may enter in the register of charges a memorandum of satisfaction.

The Registrar shall inform affected parties within thirty days of making the entry in the registrar of charges.

Certificate of registration of satisfaction of charge: Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge in Form No. **CHG-5**.

NOTICE OF CHARGE

According to section 80, where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. The section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

REGISTER OF CHARGES MAINTAINED IN ROC'S OFFICE

In accordance with section 81 and the rules the Registrar of Companies shall maintain a register containing particulars of the charges registered in respect of every company. The particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of section 81 of the Act.

This charge register shall be open to inspection by any person on payment of fee for each inspection.

INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER

Section 84 provides that if any person obtains an order for the appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or if any person appoints such receiver or person under any power contained in any instrument, he shall, within a period of thirty days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the Registrar along with a copy of the order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

Any person so appointed shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the Registrar shall register such notice.

The notice of appointment or cessation of a receiver of, or of a person to manage, the property, subject to charge, of a company shall be filed with the Registrar in Form No. **CHG.6** along with fee.

COMPANY'S REGISTER OF CHARGES

Section 85 provides that every company shall keep at its registered office a register of charges in Form No. **CHG.7** which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.

The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.

Such register of charges shall contain the particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.

All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.

A copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

Inspection of Charges: The register of charges and instrument of charges shall be kept open for inspection during business hours by members, creditors or any other person subject to reasonable restriction as the company by its article impose. The register of charges and the instrument of charges kept by the company shall be open for inspection- (a) by any member or creditor of the company without fees; (b) by any other person on payment of fee.

RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES /CONDONATION OF DELAY (SECTION 87)

The Central Government on being satisfied that –

- (i) a. the omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or
- b. the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or
- c. the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or
- (ii) on any other grounds, it is just and equitable to grant relief, it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

Where the instrument creating or modifying a charge is not filed within a period of three hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within thirty days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.

The section implies that the the Central Government has power to condone delay beyond a period of three hundred days. This section empowers Central Government to condone delay for registration of modification of particulars of any charge and for filing of intimation for satisfaction of charges. Further this section empowers central Government to rectify the omission or mis-statement in register of charges. The application may be filed by the company or any other person interested with the Central Government in Form No.**CHG-8** along with the fee.

Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

The order passed by the Central Government under sub-section (1) of section 87 of the Act shall be required to be filed with the Registrar in **Form No.INC.28** along with the fee as per the conditions stipulated in the said order.

GIST OF E-FILING UNDER CHARGE MANAGEMENT

S.No.	E-Form	Purpose
1	CHG-1	Application for registration of creating or modifying the charge (for other than Debentures)
2	CHG-2	Certificate of registration
3	CHG-3	Certificate of modification of charge
4	CHG-4	intimation of the satisfaction to the Registrar
5	CHG-5	Memorandum of satisfaction of charge
6	CHG-6	Notice of appointment or cessation of receiver or manager
7	CHG-7	Register of charges
8	CHG-8	Application for condonation of delay shall be filed with the Central Government
9	CHG-9	Creating or modifying the charge in (for debentures including rectification)

CONSEQUENCES OF NON-REGISTRATION OF CHARGE

According to Section 77 of the Companies Act, 2013, all types of charges created by a company are to be registered by the ROC, where they are non-compliant and are not filed with the Registrar of Companies for registration, it shall be void as against the liquidator and any other creditor of the company. In the case of *ONGC Ltd v. Official Liquidators of Ambica Mills Co Ltd (2006) 132 Comp Cas 606 (Guj)*, the ONGC had not been able to point out whether the so called charge, on the basis of which it was claiming preference as a secured creditor, was registered or not. It was held that in the light of this failure, ONCG could not be treated as a secured creditor in view of specific provisions of section 125 and the statutory requirement under the said section. This does not, however, mean that the charge is altogether void and the debt is not recoverable. So long as the company does not go into liquidation, the charge is good and may be enforced.

Void against the liquidator means that the liquidator on winding up of the company can ignore the charge and can treat the concerned creditor as unsecured creditor. The property will be treated as free of charge i.e. the creditor cannot sell the property to recover its dues.

Void against any creditor of the company means that if any subsequent charge is created on the same property and the earlier charge is not registered, the earlier charge would have no consequence and the latter charge if registered would enjoy priority. In other words, the latter charge holder can have the property sold in order to recover its money.

Thus, non-filing of particulars of a charge does not invalidate the charge against the company as a going concern. It is void only against the liquidator and the creditors at the time of liquidation. The company itself cannot have a cause of action arising out of non-registration [*Independent Automatic Sales Ltd. vs. Knowles & Foster (1962) 32 Comp Cas*].

PARTICULARS OF CHARGES

The following particulars in respect of each charge are required to be filed with the Registrar:

- (a) date and description of instrument creating charge;
- (b) total amount secured by the charge;
- (c) date of the resolution authorising the creation of the charge; (in case of issue of secured debentures only);
- (d) general description of the property charged;
- (e) a copy of the deed/instrument containing the charge duly certified or if there is no such deed, any other document evidencing the creation of the charge to be enclosed;
- (f) list of the terms and conditions of the loan; and
- (g) name and address of the charge holder.

PROCEDURE FOR REGISTRATION OF CREATION/ MODIFICATION SATISFACTION OF CHARGE

If a company has passed special resolutions under Section 180(2) of the Companies Act, 2013, authorising its Board of directors to borrow funds for the requirements of the company and under Section 180(1)(a) of the Companies Act, 2013, authorising its Board of directors to create charge on the assets and properties of the company to provide security for repayment of the borrowings in favour of the financial institutions/banks or lenders and in exercise of that authority has signed the loan documents and now proposes to have the charge, created by it registration with the ROC, should follow the procedure detailed below:

1. Where the special resolution is passed as required under section 180 of the Companies Act, 2013, form MGT14 of the Companies (Management and Administration) Rules, 2014 is to be filed with the registrar.
2. According to section 77 of the Companies Act, 2013 every company creating any charge created within or outside India on property or assets or any of the company's undertakings whether tangible or otherwise, situated in or outside India shall have to be registered. For the purpose of creating/ modifying a charge file particulars of the charge with the concerned Registrar of Companies within thirty days of creating the **Form No.CHG-1** (for other than Debentures) or **Form No.CHG-9** (for debentures including rectification), as the case may be.
3. Attach the following documents with e-Form No. **CHG-9 / CHG-1**:

A certified true copy of every instrument evidencing any creation or modification of charge.

In case of joint charge and consortium finance, particulars of other chargeholders.

Instrument(s) evidencing creation or modification of charge in case of acquisition of property which is already subject to charge together with the instrument evidencing such acquisitions

3. Payment of fees can be made online in accordance with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014. Electronic payments through internet can be made either by credit card or by internet banking facility.
4. If the particulars of charge cannot be filed within thirty days due to unavoidable reasons, then it may be filed within three hundred days of such creation after payment of such additional fee as prescribed in with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014.
5. Such application for delay to the registrar shall be made in **Form No.CHG-1** and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

6. Verification of every instrument evidencing any creation or modification of charge, where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal of any of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge.
7. Verification of every instrument evidencing any creation or modification of charge, where the instrument or deed relates, whether wholly or partly, to the property situated in India, the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.
8. Where a charge is registered with the Registrar obtain a certificate of registration of such charge in Form No. **CHG-2**. Where the particulars of modification of charge is registered the Registrar shall issue a certificate of modification of charge in Form No. **CHG-3**.
9. A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar in Form No. **CHG-4** along with the fee as prescribed in with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014.
10. Where the Registrar enters a memorandum of satisfaction of charge in full obtain a certificate of registration of satisfaction of charge in Form No. **CHG-5**
11. Incorporate changes in relation to creation, modification and satisfaction of charge in the register of charges maintained by the company in Form No. **CHG-7** and enter therein particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge. Such register is to be kept at its registered office of the company.
12. All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.
13. The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.
14. Where the satisfaction of the charge is not filed with the Registrar within thirty days from the date on such payment of satisfaction, an application for condonation of delay shall be filed with the Central Government in Form No. **CHG-8** along with the fee as prescribed in with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014.
15. Where the instrument creating or modifying a charge is not filed with the Registrar within a period of three hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification an application for condonation of delay shall be filed with the Central Government in Form No. **CHG-8** along with the fee as prescribed in with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014.
16. The order passed by the Central Government shall be required to be filed with the Registrar in Form No. **INC.28** along with the fee as per the conditions stipulated in the said order.
17. For all other matters other than condonation of delay, application shall be made to the Central government in Form No. **CHG-8** along with the fee.

ANNEXURES

Specimen of special resolution under Section 180 (3) (c) authorising the Board to borrow for company's business upto a limit beyond paid up capital and free reserves

Special resolution

To consider and, if thought fit, to pass with or without modification(s), the following resolution as Special Resolution:

“RESOLVED THAT pursuant to the provisions of Section 180(3)(c) and other applicable provisions, if any, of the Companies Act, 2013, and subject to such approval as may be necessary, consent of the company be and is hereby accorded to the Board of directors of the company for borrowing, from time to time, such sum of money as may not exceed Rs. (Rupees), for the purpose of the business of the company, notwithstanding that the moneys to be borrowed together with the monies already borrowed (apart from temporary loans obtained from the company's bankers in the ordinary course of business) will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, the reserves not set apart for any specific purpose, provided that the total amount upto which the monies may be borrowed by the Board of directors of the company shall not exceed the aggregate of the paid-up capital and free reserves of the company by more than the sum of ‘ (Rupees) at any one time.

Resolved further that the Board be and is hereby authorized to do all the acts, deed and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above resolution”

Explanatory Statement

The shareholders of the company had, at the extraordinary general meeting of the company held on, passed a special resolution under Section 180 (3) (c) for borrowing the maximum amount of Rupees, upto which the Board of directors of the company could borrow funds from financial institutions and banks in excess of the company's paid-up capital and free reserves. However, in view of the increased business activities of the company, the said ceiling of Rupees (.....) has been found to be inadequate. Your directors are of the opinion that the ceiling of borrowings by the Board be raised to rupees one hundred crore.

Hence the proposed resolution for consideration and approval by the members of the company. None of the directors is concerned or interested in the proposed resolution.

Specimen of resolution under Section 180(1)(a) for creating charge on company's assets and properties

1. To consider and, if thought fit, to pass with or without modification(s), the following as Special Resolution;

“RESOLVED THAT consent of the Company be and is hereby accorded in terms of Section 180(1) (a) and other applicable provisions, if any, of the Companies Act, 2013 or any modification or re-enactment thereof, to mortgaging and/or charging by the Board of directors of the Company by way of equitable and/or legal mortgage on such immovable and movable properties of the Company, both present and future, together with power to takeover the assets of the Company in certain events, to or in favour of Industrial Development Bank of India (IDBI) and The Industrial Finance Corporation of India Ltd. (IFCI) by way of first *pari passu* Charge to secure the Rupee Term Loans of ` 1000.00 lacs and ` 880.00 lacs respectively granted to the Company together with interest at the agreed rate(s), liquidated damages, front end fees, premia on pre payment, costs, charges, expenses and all other moneys payable by the Company under the Loan Agreements, Deeds of Hypothecation and other documents executed/to be executed by the Company in respect of the Term Loans of IDBI and IFCI.

RESOLVED FURTHER THAT the Board of directors be and is hereby authorised and shall always be deemed to have been authorised to finalise with IDBI and IFCI the documents for creating the aforesaid mortgage and/ or charge and to do all acts, deeds and things as may be necessary for giving effect to the above resolution.”

2. To consider and, if thought fit, to pass with or without modification(s), the following as Special Resolution;

“RESOLVED THAT consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013 or any modification or re-enactment thereof, to mortgaging and/or charging by the Board of directors of the Company by way of equitable and/or legal mortgage on such immovable and movable properties of the Company, both present and future, in favour of State Bank of India, New Delhi the Company’s Bankers by way of Second Charge to secure the various fund based/non-fund based credit facilities granted/to be granted to the Company and the interest at the agreed rate, costs, charges, expenses and all other moneys payable by the Company under the Deed(s) of Hypothecation and other documents executed/to be executed by the Company in respect of credit facilities of State Bank of India, in such form and manner as may be acceptable to State Bank of India.

RESOLVED FURTHER THAT the Board of directors be and is hereby authorised and shall always be deemed to have been authorised to finalise with State Bank of India the documents for creating the aforesaid mortgage and/or charge and to do all acts, deeds and things as may be necessary for giving effect to the above resolution.”

Explanatory Statement Item No. 1 & 2

Industrial Development Bank of India (IDBI) and The Industrial Finance Corporation of India Ltd. (IFCI) have sanctioned Term Loans of ` 1000.00 lacs and ` 880.00 lacs respectively to the company. These loans are to be secured by First Charge on immovable and movable properties of the Company, both present and future, in the manner, as may be required by IDBI and IFCI. Such mortgage/charge shall rank first *pari passu* Charge with the Charges already created/to be created in favour of the participating Institutions/Banks for their assistances.

State Bank of India, New Delhi has also agreed to grant, in principle, various fund based/non-fund based Cash Credit facilities to the Company. According to the conditions of granting such facilities to the Company, these facilities are required to be secured by a second charge by way of equitable and/or legal mortgage on all the immovable and movable properties of the Company, both present and future on such terms as may be agreed to between the Company, State Bank of India and other existing lenders.

Section 180(1)(a) of the Companies Act, 2013 provides, *inter alia*, that the Board of directors of a public company shall not, without the consent of a public company in general meeting, sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking(s) of the Company or where the Company owns more than one undertaking, of the whole or substantially the whole of any such undertaking. Mortgaging/charging of the immovable and movable properties of the Company as aforesaid to secure Rupee Term Loans and the various Cash Credit facilities may be regarded as disposal of the whole or substantially the whole of the said undertaking(s) of the Company and therefore requires consent of the Company pursuant to Section 180(1)(a) of the Companies Act, 2013.

The Directors recommend the resolutions for approval of the shareholders as ordinary resolutions under Section 180(1)(a) of the Companies Act, 2013.

None of the Directors are concerned or interested in the proposed resolutions.

**Specimen of the Board Resolution under Section 179(3)(d) to borrow Moneys within
the Authority of the Board.**

The Chairman informed the Board that The Industrial Finance Corporation of India Ltd. (IFCI), New Delhi, has at the request of the company, sanctioned Rupee Term Loan of '..... to meet a part of the cost of Modernisation-cum-Expansion scheme comprising replacement of the existing old stainless steel Distillation plant by copper Distillation Plant, installation of an additional MS Digester and construction of storage lagoons as stipulated by the Pollution Control Board at the Company's existing factory at

A copy of the letter of sanction no..... dated received from IFCI (a copy whereof duly signed by the Chairman for the purpose of identification was placed on the table of the meeting).

After some discussions, the following resolution was passed unanimously:-

(I) RESOLVED

1. That the Company do accept the offer of The Industrial Finance Corporation of India Ltd. (IFCI) vide their letter no..... dated to grant to the company rupee term loan of '..... (Rupees..... only) (hereinafter referred to as 'the said Term Loan') on the terms and conditions contained in the Letter of Intent no dated received from IFCI (copy whereof was placed on the table at the meeting).
2. That Shri..... and Shri be and are hereby authorised severally to convey to IFCI acceptance on behalf of the Company of the said offer for financial assistance on the terms and conditions contained in their Letter of Intent referred to above and agree to such changes and modifications in the said terms and conditions as may be suggested and acceptable to IFCI from time to time and to execute such deeds, documents and other writings as may be necessary or required for this purpose.
3. That the company do borrow from IFCI the said term loan of '..... (Rupees..... only) on the terms and conditions set out in the General Conditions No. GC-1-99 applicable to assistance provided by IFCI (hereinafter referred to as 'The General Conditions') and in the Standard Form of Loan Agreement for rupee term loan in addition to the special terms and conditions mentioned in the Letter of Intent no..... dated received from IFCI (Copies whereof were placed on the table at the meeting) and also avail of interim disbursement(s) from time to time as may be allowed by IFCI.
4. That the IFCI will be at liberty to appoint and remove, at its sole discretion, Nominee Director(s) on the Board of directors of the Company from the date of the passing of this resolution and that the appointment of the Nominee director(s) shall not be construed as any commitment on the part of IFCI to grant/ disburse and sanctioned assistance.
5. That the aforesaid Standard Forms of Loan Agreement(s) be and are hereby approved and Shri..... and Shri..... be and are hereby severally authorised to accept on behalf of the Company such modifications therein as may be acceptable to IFCI and finalise the same.
6. That the Common Seal of the Company be affixed to the stamped engrossment(s) in duplicate of the loan agreement(s) (as per the standard form(s) with such modifications as may be agreed to between IFCI and the company) in the presence of one of the officers i.e. Shri and Shri who shall sign the same in token thereof.
7. That the Company shall execute the Loan Agreement(s) relating to the above facilities within the period stipulated by IFCI, the condition being that till such agreement being executed there is no binding obligation or commitment on the part of IFCI to advance any money or incur any obligation thereunder.
8. That the standard forms of the following documents namely:-

- (i) Deed of Hypothecation
 - (ii) Undertaking for meeting shortfall/overrun
 - (iii) Undertaking regarding non-disposal of shareholdings
 - (iv) General Declaration and Undertaking(s) placed before the meeting be and are hereby approved and that Shri..... of the Company be and are hereby severally authorised to finalise, on behalf of the company, the said documents and also to approve and finalise such other deeds, documents and writings as may be required by IFCI in connection with the above facilities.
9. That the Common Seal of the Company be affixed to the stamped engrossment(s) of the Deed of Hypothecation and to such other documents as may be required to be executed under the Common Seal of the company in favour of IFCI to secure the aforesaid facilities in the presence of one of the officers i.e. Shri and Shri..... who shall sign the same in token thereof.
10. That Shri..... and Shri..... of the Company be and are hereby severally authorised to accept amendments to such executed loan agreement/deed of hypothecation and other documents as and when become necessary and to sign letter(s) of undertakings, declarations, agreements and other papers which the company may be required to sign for availing of the required facilities and, if so required, the Common Seal of the Company be affixed thereto in the presence of any one of the said officers, who shall sign the same in token thereof as required by the Articles of Association of the Company.
11. That the company do file the particulars of the charge(s) to be created in favour of the IFCI with the concerned Registrar of Companies within the time prescribed by law therefor.
12. That the copies of foregoing resolutions certified to be true copy by the Company Secretary be furnished to the IFCI and they be requested to act thereon.

LESSON ROUND-UP

- A charge is a right created by any person including a company referred to as “the borrower” on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as “the lender”, which has agreed to extend financial assistance. The power of the company to borrow includes the power to give security also.
- Mortgage is created by the act of parties whereas a charge may be created either through the act of parties or by operation of law.
- A company is required to file e-form CHG-1 or CHG-2 through MCA portal giving complete particulars together with the instrument creating charge within 30 days of creation of charge under Section 77 of the Companies Act, 2013.
- For intimating modification of charge, e-form CHG-1 or CHG-2 is required to be filed within 30 days of modification. A variation in the rate of interest payable on the loan amount by the borrowing company to the lending institution or the bank will constitute a modification of charge, unless the terms of variation are covered in the original charge.
- A registration of charge constitutes a notice to whosoever acquires a future interest in the charged assets.
- In e-governance era, there is a facility for inspection of charge through electronic means using internet.

- The certificate issued by the Registrar whether in case of registration of charge or registration of modification, shall be conclusive evidence that the requirements of Chapter VI of the Act (Registration of Charges) and the rules made thereunder as to registration of creation or modification of charge, as the case may be, have been complied with.
- Every company is required to keep at its registered office a register of all charges as well as a copy of every instrument creating any charge.
- Company may apply to Central Government for extension of time for filing particulars to ROC for creation, modification or satisfaction of charge in form CHG-8.
- Company or any person interested in the charge can make an application to the Central Government for rectification of Register of charges in form CHG-8.
- 1

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation).

1. What is a charge? State the procedure to be followed by a company for registration of a charge.
2. Draft a resolution to borrow for company's business upto a limit beyond paid-up capital and free reserves.
3. State the procedure to be adopted by the company for satisfaction of a registered charge.
4. Draft resolution for creating a charge on the company's assets and properties.
5. What are the consequences of non registration of charge?
6. Distinguish between:
 - (i) Charge and Mortgage
 - (ii) Charge and Pledge.
7. E-governance is stakeholders friendly with respect to charges. Comment.

Lesson 15

Inter-Corporate Loans, Investments, Guarantees and Security

LESSON OUTLINE

- Provisions of loan and investment by company.
- Procedure for Inter-corporate loans and investments
- Necessary Resolution
- Annexure – Specimen Resolution
- LESSON ROUND UP
- SELF TEST QUESTION

LEARNING OBJECTIVES

The Companies Act, 2013 has come up with a change in the concept of 'Loan and Investment by Company'. The Act provides that inter-corporate investments not to be made through more than two layers of investment companies.

Further, the Act states that companies can make investments only through two layers of investment companies subject to exceptions which includes company incorporated outside India.

After going through this lesson, you should be able to understand the procedures relating to inter-corporate loans, investments, guarantees and security.

LOANS AND INVESTMENT BY COMPANY [SECTION 186]

Introduction

The Companies Act 2013 has come up with a change in the concept of 'Loan and Investment by Company'. The new Act provides that inter-corporate investments not to be made through more than two layers of investment companies.

Further, the 2013 Act states that companies can make investments only through two layers of investment companies subject to exceptions which includes company incorporated outside India.

In pursuance to the provisions of Section 186(1) of the Act, a Company shall make investment through not more than two layers of investment companies.

'Layer' according to explanation (d) of Section 2(87) of the Act in relation to a holding Company means its subsidiary or subsidiaries.

'Investment Company' means a Company whose principal business is the acquisition of shares, debentures or other securities"

The provisions of Section 186 (1) shall not have effect in the following cases:

- If a company acquires any company which is incorporated outside India and such company has investment subsidiaries beyond two layers as per the laws of such country.
- A subsidiary company from having any investment subsidiary for the purposes of meeting the requirement under any law/ rule/ regulation framed under any law for the time being in force.

Section 186(1) shall not apply on a Specified IFSC public and private company.

Limits for Loans /Guarantee/Security/Investment [Sec-186(2)]

In pursuant to provisions of Section 186(2) of the Act, no company shall directly or indirectly

- give any loan to any person or other body corporate,
- give any guarantee or provide security in connection with a loan to any other body corporate or person and
- acquire by way of subscription, purchase or otherwise, the securities of any other body corporate

exceeding 60% of its paid-up share capital plus free reserves plus securities premium account or 100% of its free reserves plus securities premium account, whichever is more.

This section mandates a company to make investment only through two layers of investment companies. It is the investor company which shall be held liable in case of any violation of the section; therefore, It is prudent and advisable that the investee company to seek a declaration from the investor company whether the investment made by the investor is coming from more than two layers up.

Section 186(2) shall not apply on Specified IFSC public and private company if a company passes a resolution either at a meeting of the Board of Directors or by circulation.

Approval from Members [Section 186(3)]

Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:

Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply:

Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4)]

Disclosure of Particulars of Loan, Guarantee given and Security Provided [Section 186(4)]

Section 186(4) of the Act provides that the Company shall disclose following details to the members in the financial statement.

- the full particulars of the loans given, investment made or guarantee given or security provided.
- 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.

The notice of the general meeting for passing resolution shall indicate that

- (a) The limits that will be required in excess of the prescribed limits involved in the proposal;
- (b) The particulars of the body corporate in which the investment is proposed to be made or to which the loan or guarantee or security proposed to be given.
- (c) The purpose of the investment, loan, guarantee or security;
- (d) The source of funding for meeting the proposal; and
- (e) Other details as may be specified.

Approval of Board and Public Financial Institution [Section 186(5)]

In pursuant to provisions of Section 186(5) of the Act, every company shall take consent of all the directors present at the board meeting before making any investment, giving loan and guarantee and providing security.

Further, the prior approval of a Public Financial Institutions is required in case :-

- (a) The aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given exceeds the limit as specified in Section 186(2)
- (b) There is a default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

In case of a Specified IFSC public and private company, the Board can exercise powers by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.

Exemptions to wholly owned subsidiary company:

- (i) Where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of sub- section (3) of section 186 shall not apply.
- (ii) In such cases, the company are required to disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub- section (4) of section 186.

Companies Registered Under Securities Exchange Board of India (SEBI) [Section 186(6)]

No company registered under section 12 of the Securities and Exchange Board of India Act, 1992 and also covered under such class or classes of companies which may be notified by the Central Government in consultation with the Securities and Exchange Board, shall take any intercorporate loan or deposits , in excess of the limits specified under the regulations applicable to such company , pursuant to which it has obtained certificate of registration from the Securities and Exchange Board of India.

Rate of Interest on Loan [Section 186 (7)]

No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

No Loan by Defaulter Company [Section 186(8)]

No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

Register of Loan [Section 186 (9 and 10)]

Section 186(9) of the Act mandates every Company to maintain a register which shall contain particulars of loan or guarantee given or security provided or investment made. Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, maintain a register in Form MBP 2 and entered therein separately, the particulars of loan and guarantee given, securities provided and acquisitions made as aforesaid.

MCA vide General Circular No. 15/2014 dated 9th June 2014 clarified that registers maintained by companies pursuant to sub-section (5) of Section 372A of Companies Act, 1956 may continue as per requirements under these provisions and the new format prescribed vide Form MBP2 shall be used for particulars entered in such registers on and from 1.4.2014.

This register shall be kept at registered office of the company and the register shall be preserved permanently and shall be kept in the custody of company secretary of the company or any person authorized by the Board for the purpose.

The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

The extracts of the register may be opened for inspection and copies may be furnished to members who demands for the same on payment of prescribed fee as mentioned in the Articles which shall not exceed ten rupees for each page.

Non-Applicability of Section 186

Nothing contained in this section, except sub-section (1), shall apply—

(a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;

(b) to any investment—

(i) made by an investment company;

(ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;

(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities]

As per explanation to Section 186(13), the expression “infrastructure facilities” means the facilities specified in schedule VI.

Section 186 shall not apply to –

(a) a Government company engaged in defence production ;

(b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the state Government before making any loan or giving any guarantee or providing any security or making any investment under the section.

Penalty for contravention of Section 186

For Company:

Every Company which contravenes the provisions of this Section shall be liable to a penalty which shall not be less than Rupees twenty five thousand but which may extend to Rupees five lakhs.

For Officers:

Every officer of the Company who is default shall be punishable with imprisonment for a term which may extend to two years and fine which shall not be less than Rupees twenty five thousand but which may extend to Rupees One lakh.

Meaning of the term investment

Meaning of Investment : *Investment* for the purposes of section 186(1) would mean as used in section 186(2)(c) of the Act, 2013. Thus the following will be counted as “investments”:

- Subscription or purchase of shares
- Subscription or purchase of share warrants
- Subscription or purchase of debentures bonds or similar debt securities

The following will not be counted as investments:

- Making of **loans or advances**
- Any other financial transactions such as leases, purchase of receivables, or other credit facilities

PROCEDURES INVOLVED IN MAKING LOAN, GIVING GUARANTEE AND PROVIDING SECURITY

Following procedures may be adopted by the company while giving loan to any other body corporate, providing guarantee or security in connection with a loan or acquisition by way of subscription, purchase the securities of any other body corporate.

1. It is to be kept in mind that a company can give any loan or give any guarantee or provide security and acquire securities of any Body corporate through Board resolution up to 60% of its paid up capital, free reserves and security premium account or 100% of its free reserves and security premium whichever is more.
2. On the basis of aforesaid conditions and requirements of the company meeting of Board of Directors is to be convened after giving proper notice and proposals of giving loan or giving guarantee or providing security etc. are to be discussed.
3. No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting.
4. It is to be checked whether there is any existing loan from any public financial institution, If so, prior approval of that public financial institution is also required for any subsequent loan from any other source. However, prior approval of Public Financial Institution shall not be required where the aggregate loan, investment, guarantee and security proposed is within the limits as specified under section 186(2) and there is no default in repayment of loan or interest thereon to the Public Financials Institution.
5. After deciding the source of fund and quantum of requirement, the Board may authorize one of the directors of the company or any other person to apply for the concerned public financial institutions for approval.
6. Arrange to convene a general meeting of shareholders after giving proper notice and to pass special resolution therein, where the giving of any loan or guarantee or providing any security or the acquisition

exceeds the limits specified i.e 60% of its paid up capital, free reserves and security premium account or 100% of its reserves and security premium whichever is more.

7. File the copy of special resolution in Form No. MGT-14 along with the fee as provided in Companies (Registration of offices and fees) Rules, 2014 with the Registrar within 30 days of passing the resolution. Necessary documents are required to be attached as per the requirements of the form.
8. Registers are to be maintained in Form MBP-2 by every company giving loan or giving guarantee or providing security or making an acquisition shall, from the date of its registration and the particulars of loan and guarantee given, securities provided and acquisition are to be entered therein.
9. Entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition.
10. The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.
11. It is to be ensured that no loan shall be given at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan.
12. The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security.
13. Scrutinize the repayment history of the company with regards to repayment of any deposits or interest thereon.

No company which is in default in the repayment of any deposits or in payment of interest thereon shall give any loan or give any guarantee or provide any security or make any investment through acquisition of another company till such default is subsisting.

ANNEXURES

SPECIMEN OF BOARD RESOLUTION TO PROVIDE CORPORATE GUARANTEE FOR AND ON BEHALF OF A SUBSIDIARY COMPANY SEEKING WORKING CAPITAL LOAN FROM ANY BANK.

“RESOLVED THAT in consideration of the STATE BANK OF PATIALA (SBP) having agreed to advance working capital facilities with an overall credit limit of Rs.50,00,00,000/- (Rupees Fifty Crore only) (hereinafter referred to as “the credit facilities”) in the manner and on the terms and conditions contained in the sanction letter no..... dated to M/s ABC Pvt. Ltd., a company incorporated under companies Act, 2013 having registered office at (hereinafter referred to as the borrower”), one of the subsidiaries of M/s XYZ Ltd. (the Company) and the company do execute a corporate guarantee guaranteeing the repayment of the credit facilities along with interest in favour of SBP for and on behalf of M/s ABC Pvt. Ltd., the subsidiary company.

FURTHER RESOLVED THAT the Board of Directors of the company consider and declare the following:

1. That the terms and conditions for providing corporate guarantee as annexed to the sanction letter no.....dated....communicated by the Bank to M/s ABC Pvt. Ltd. be and is hereby accepted as these are not prejudice to the interest of the company.
2. The Board considered that the corporate guarantee is for an amount of Rs. 50 crore being approved for tenure of 5 years subject to renewal by the Bank.
3. The Board confirm that the guarantee provided is not prejudicial to the interest of the company.
4. The Board further considered receiving counter guarantee from M/s ABC Pvt. Ltd. in favour of the company M/s XYZ Ltd. to protect the interest of the company.

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RESOLVED FURTHER THAT the draft of the Guarantee Agreement received from SBP along with its sanction letter no.....dated..... (Copies whereof duly authenticated by the chairman of the Board have been circulated to the members of the Board) be and is hereby approved and the Mr. MD, Managing Director of the company be and is hereby authorised to accept on behalf of the company with such modification therein as may be acceptable to SBP.

RESOLVED FURTHER THAT the common seal of the company be affixed to the guarantee agreement (with such modifications as may be agreed) in the presence of Mr. MD, Managing Director who shall sign the same in token thereof, and Mr. ED, Executive Director who shall counter sign the same in token thereof.

FURTHER RESOLVED THAT an undertaking to that effect that the company is willing to provide its corporate guarantee and execution of the necessary guarantee agreement for the above said purposes be furnished to SBP by Mr. MD, Managing Director and/or Mr. ED, Executive Director for and on behalf of the company for providing corporate guarantee.

RESOLVED FURTHER THAT, a copy of the foregoing resolution duly certified as a true copy be submitted to the Bank under signature of any one of the director of the company and the Bank do act upon the same.”

**SPECIMEN OF BOARD RESOLUTION TO INVEST COMPANY’S FUNDS IN SHARES/DEBENTURES/
BONDS OF ANOTHER COMPANY**

“RESOLVED THAT pursuant to the provisions of Section 186 of the Companies Act, 2013, the unanimous consent of all the directors present at the meeting is be and is hereby given that the company to invest a sum not exceeding Rs. 50,00,00,000/- (Rupees Fifty Crore only) in the equity shares of M/s ABC Ltd.

RESOLVED FURTHER THAT Mr. MD, Managing Director of the company be and is hereby authorised to sign the share application form(s) and/or transfer deeds, as may be required and other necessary documents relating thereto.”

SPECIMEN OF BOARD RESOLUTION TO ACQUIRE SHARES OF ANOTHER COMPANY

“RESOLVED THAT pursuant to Section 186 of the Companies Act, 2013, the consent of the Board of Directors of the company be and is hereby accorded to make investments of Rs. 50,00,00,000/- (Rupees Fifty Crore only) for acquisition of 5,00,000 equity shares of Rs.100/- each fully paid up in M/s XYZ Ltd. from various existing shareholders of M/s XYZ Ltd.

RESOLVED FURTHER THAT Mr. MD, Managing Director of the company be and is hereby authorised to make payment of consideration to the transferors and to do all such necessary act as may be necessary for this act.”

**SPECIMEN OF SPECIAL RESOLUTION TO GIVE AUTHORITY TO BOARD OF DIRECTORS TO MAKE
INVESTMENT IN EXCESS OF THE PRESCRIBED LIMIT.**

“RESOLVED THAT pursuant to the provisions of Section 186 of the Act and other applicable provisions, if any, the consent of the members of the company be and is hereby granted to make investments of a sum not exceeding Rs. 100 Crore by way of subscription and/or purchase of equity shares of M/s XYZ Ltd., notwithstanding that such investment or such investment together with the company’s existing investment in all other body corporate shall be in excess of the limits prescribed under section 186 of the Act.

RESOLVED FURTHER THAT the Board of directors of the company be and is hereby authorized to do all such acts, deeds, matters and things as, in its absolute discretion, may be considered necessary, expedient or desirable and to settle any question or doubt that may arise in relation thereto in order to give effect to the foregoing resolution or otherwise considered by the Board of directors to be in the interest of the company.”

Explanatory Statement

As on date the aggregate amount of the investments in shares/debentures, loans and guarantee(s)/security(ies) made, given, or provided by the company to other bodies corporate are within the limits provided in Section 186 of the Companies Act, 2013. Since the Board wants to invest in excess of the prescribed limit specified in Section 186 of the Act, approval of the shareholders of the company is required.

The Board of Directors in its meeting held on _____ decided to recommend the special resolution as set out in the notice for approval of the shareholders.

None of the directors save and except Mr. X and Mr. Y are concerned or interested in this resolution.

LESSON ROUND UP

- The Companies Act, 2013 has come up with a change in the concept of loan and investment by the company, the inter-corporate investments shall not be made through more than two layers of investment companies.
- According to section 186(5) of the companies Act, every company shall take consent of all the directors present at the board meeting before making any investment, giving loan and guarantee and providing security.
- The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made 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.
- Every company shall maintain a register which shall contain particulars of loan or guarantee given or security provided or investment made.
- Every company which contravenes the provisions of section 186 shall be liable to a penalty which shall not be less than Rupees 25,000 but which may extend to Rupees 5,00,000.

SELF TEST QUESTIONS

1. Draft a resolution for making inter-corporate guarantee.
2. What are the particulars to be entered in the register maintained in respect of investments or loan made, guarantee given by the company?
3. Discuss the limits for making inter-corporate Loans/Guarantee/ Security/Investment.
4. “The company shall disclose the details related to loan/guarantee/security provided, to the members in financial statements”. Discuss.
5. Discuss the procedure adopted by the Board at its general meeting for making inter- corporate loans and investments.

Lesson 16

E-filing

LESSON OUTLINE

- E-governance and MCA-21
- MCA- 21 and its Legal Validity
- Important aspects of MCA- 21
 - Organization of ROC office under MCA
 - Certified Filing Centre
- Substantial Benefits of MCA – 21
- MCA Services
- E-Services
 - Filing of E- Forms
 - Central Registration Centre
 - Incorporation of company
 - Getting Directors Identification Number (DIN)
 - Getting Digital Signature Certificate (DSC)
 - Integrated Process of Name Reservation, Company Incorporation, DIN Allotment, Issuance of PAN & TAN
 - Payment of stamp duty
 - Re-submission
 - Refund
 - Inspection of Documents
- All about Filling & Filing of E- Forms
 - E- Forms
 - Prerequisites for e- filing
 - Important Terms used in e- filing
- Pre-certification of e-Forms
 - Fees
 - Mode of Payment
- Guidelines for filling and filing e- forms
 - Important aspects to be considered at the time of annual filing
 - XBRL filing
- Description of e-forms
- Penalty for Filing False Documents/ Statements with the Registrar
 - Modes of Payment of Fees
 - Condonation of Delay
- LESSON ROUND UP
- SELF TEST QUESTION

LEARNING OBJECTIVES

Keeping in tune with the e-governance initiatives the world over, Ministry of Corporate Affairs (MCA), Govt. of India has initiated the MCA-21 project in the year 2006, to enable an easy and secure access to MCA services in a manner that best suits the corporate entities and professionals and of course, the public.

The significant changes brought about by the introduction of MCA-21 project and the e-filing has introduced a sea-change in the process of filing, storage of records and inspection of records of registered companies. Professionals associated with the corporate sector, the individual investors, the Investor Protection Groups and the Prosecuting Agencies of the Government now have easy access to vital data to regulate the affairs of the companies and can also launch prosecutions against the erring companies and their directors/board of management. It is envisaged that since all the relevant data about the concerned companies are filed on-line and these get stored as master database in the electronic repository, due attention should be given towards filling and filing of the e-forms.

This chapter covers all the important aspects relating to various e-services like e-stamping, e-inspection, filling and filing the e-forms etc. The students may refer to mca.gov.in for the format of various e-Form

E-GOVERNANCE AND MCA - 21

With the advent of Information and Communication Technology in all sectors today, Governments across the globe including the Government of India are taking major initiatives to integrate IT in all their processes. Electronic Governance is the application of Information Technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. E-governance is a highly complex process requiring provision of hardware, software, networking and re-engineering of the procedures for better delivery of services.

MCA-21 is an ambitious e-governance initiative of Government of India that builds on the Government's vision of National e-governance in the country. As part of the Government's focus on governance norms to meet the expectations arising from globalization, MCA project was launched as a flagship initiative of Ministry of Corporate Affairs (MCA). MCA-21 has resulted in improved procedures for better delivery of services by the Ministry of Corporate Affairs. This reform of administration has not only improved efficiency and transparency in the government operations, but has also enabled the Ministry to concentrate more on policy matters.

In the words of Dr. Manmohan Singh, the then Honourable Prime Minister of India, E-Governance has the potential to transform governance and contribute to the reform of administration by enabling greater speed and efficiency in official transactions. The commissioning of the MCA-21 project is a landmark measure for advancing the cause of the national e-governance plan and implementing it.

The project was named MCA 21 as it aimed at repositioning MCA as an organization capable of fulfilling the aspirations of its stakeholders in the 21st Century. Rather than compelling the business community to physically travel to MCA offices, MCA services are made available at the place of their choice, be it their homes or offices.

This E-governance initiative, a flagship programme executed by MCA in partnership with Private Player, is a fine example of public private partnership, and is built on a BOOT (Built, Operate, Own and Transfer) model. Infosys is currently maintaining this project.

MCA- 21 AND ITS LEGAL VALIDITY

Section 398 of the Companies Act, 2013 has provision related to filing of applications, documents, inspections in electronic form.

Section 398(1) provides that notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may make rules so as to require from such date as may be prescribed in the rules that -

- (a) such applications, balance sheet, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document as may be required to be **filed or delivered** under this Act or the rules made thereunder, shall be filed in the electronic form and authenticated in such manner as may be prescribed;
- (b) such document, notice, any communication or intimation, as may be required to be **served or delivered** under this Act, in the electronic form and authenticated in such manner as may be prescribed;
- (c) such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for **inspection** under this Act or the rules made thereunder, may be made by any person through the electronic form in such manner as may be prescribed;
- (d) such **fees, charges or other sums payable** under this Act or the rules made thereunder shall be paid through the electronic form and in such manner as may be prescribed; and

The Central Government has provided all the e-forms as an annexure to the relevant Rules.

Rule 7 of Companies (Registration offices and fees) Rules, 2014 relates to manner and conditions of filing provides that Every application, financial statement, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or documents or any notice, or any communication or intimation required to be filed or delivered or served under the Act and rules made there under, shall be filed or delivered or served in computer readable electronic form, in portable document format (pdf) or in such other format as has been specified in any rule or form in respect of such application or form or document or declaration to the Registrar through the portal maintained by the Central Government on its web-site or through any other website notified by the Central Government.

IMPORTANT ASPECTS OF MCA-21

Organization of ROC Office under MCA

The ROC office working from its present address will virtually become the Back Office of the Ministry. Since the number of companies/entities may find it difficult to switch over to eFiling at the initial stage, Facilitation Centres known as Physical Front Offices (PFOs) have been set-up throughout the country to provide requisite comfort for eFiling to such companies.

Front Office and Back Office

Front Office

The major components involved in this comprehensive e-governance project are front office and back office.

Front Office represents the interface of the corporate and public users with the MCA-21 system. This comprises of Virtual Front Office and Registrar's Front Office.

Virtual front office

Virtual front office is one of the various channels available to stakeholders (companies and the professionals) to enable them to do the statutory filing with ROC Offices across the country. It merely represents a computer facility for filing of digitally signed e-forms by accessing the MCA portal through internet (www.mca.gov.in). It also presupposes availability of related facilities to convert documents into PDF format and scanning of documents wherever required.

Registrar's Front Office (RFO)

To facilitate the change over from Physical Document Filing to Digital Document Filing, the Ministry started offices known as the Registrar Front Office. It is one of the various channels available to stakeholders to enable them to do the statutory filing with ROC Offices across the country. Registrar's Front Offices are managed and operated by the operator. RFO has all facilities which are required for online filing like trained manpower, broadband connectivity, scanner, printer and related computer accessories. This office managed by MCA and TCS/Infosys officials provides free of cost service in all aspects of MCA 21 e-governance projects.

Back Office

Back Office represents the offices of Registrar of Companies, Regional Directors and Headquarters and takes care of internal processing of the forms filed by the corporate user as per MCA norms and guidelines. The e-forms are routed dynamically to the concerned authority for processing depending upon the assigned role. All the e-forms along with attachments are stored in the electronic depository, which the staff of MCA can view depending upon the access rights.

Certified Filing Centre (CFC)

In order to provide the Companies to do their eFiling, Professional Institutes (ICSI, ICAI, ICAI- cost), their Regional

Councils/ Local chapters, individual practising members and firms of professionals were authorised to create and set-up the required facilities for facilitating the eFiling process. The Certified Filing Centres, thus set-up by the Professionals are over and above the 53 *Registrar's Front Office* set-up by the Ministry under the programme. While the services available from the Facilitation Centres set-up by the Ministry are without any charge, the services provided by these Certified Filing Centres entail payment of service charges.

SUBSTANTIAL BENEFITS OF MCA 21

Elimination of interface with the offices of ROCs, RDs and the MCA

MCA-21 has been designed virtually to eliminate the physical interface between the companies and the offices of ROCs, RDs and even MCA. It has not only saved time and energy of the company representatives but also enabled them to focus on other creative tasks. Highly time consuming works of Chartered Accountants, Company Secretaries and Cost Accountants in practice i.e. the tasks of incorporation of new companies, conducting searches of important documents, obtaining certificates of creation, modification and satisfaction of charges, filing of statutory forms and returns etc. have now become very quick and easy.

The problem of becoming defaulter by the company for non-filing of Annual returns due to long queues at ROC offices is now eliminated with e-filing. Conducting search was very painful in physical maintenance of statutory records. E-filing is panacea to all these problems.

Effective use of database

With the help of database collected, the vital information has been collected, segregated in such a way that it can be used by various stakeholders for various purposes. It will help in transparency in operations and benefits to players in stock markets as well as easy and prominent exposure of defaulters.

The following websites are created:

– Website for Investor Education and Protection Fund: <http://iepf.gov.in>

Ministry of Corporate Affairs has set up the Investor Education and Protection Fund (IEPF) with the dedicated purpose of empowering investors through education and awareness building. It has been established under Section 205C of the Companies Act, 1956 and now under Section 125 of the Companies Act 2013 for promotion of investors awareness and protection of the interests of investors.

There was no unified website providing information on all financial instruments. Moreover, almost all individual websites that exist provide information from their own respective perspectives and not what and how the small investors want it. This website would fulfill the need for an information resource for small investors on all aspects of the financial markets and would attempt to do it in the small investors language.

It would provide information about IEPF and the various activities that have been undertaken/funded by it. It would also provide information relevant for investors, including about various instruments for investment, regulatory system and grievance redressal mechanism.

– www.watchoutinvestors.com:

Over the years, thousands of unscrupulous entities have defrauded the investors. Investors have lost confidence in the market consequent to a series of mishaps. In many cases, though penal regulatory action has been taken against such entities, the information about such actions lies scattered and is in a difficult-to-access, difficult-to-use format. Absence of any organized database prevents regulators and investors from taking any pre-emptive action www.watchoutinvestors.com alerts various entities and about persons with information that one should be aware of before investing. It is sponsored and aided by Investor education and protection fund and Securities and exchange board of India.

www.watchoutinvestors.com is a national web-based registry covering entities including companies and

intermediaries and, wherever available the persons associated with such entities, who have been indicted for an economic default and/or for non-compliance of laws/guidelines and/or who are no longer in the specified activity.

– www.directorsdatabase.com

It is important that investors, analysts, regulators and the market know not only about the directors who are at the helm of affairs of a company but more so about the independent directors who are supposed to bring better corporate governance and protect the interests of the minority shareholders.

www.directorsdatabase.com is Corporate Governance initiative of Bombay Stock Exchange Limited and is conceptualized, designed and maintained by Prime Database.

This website is the worlds first website providing not only a single point access to information on the board of directors of listed companies, but also a profile with age, qualification, experience and other directorships of each director. It also provides information about the independent directors on the board of a specific company. The information on the website is based on BSE listed companies who have filed information.

Better supervision and monitoring of compliance

MCA-21 has ensured better supervision and control of the MCA over Companies with regard to compliance with the provisions of the Companies Act. Thus, enforcement of law has become easier and will ultimately benefit the investors, the stake holders and the concerned Regulatory bodies. With specific details of companies and their directors available in the electronic form, it ensures proactive & effective compliance of relevant law(s) and also in turn fosters corporate governance.

Mutually beneficial system

The focus of the MCA-21 program is on bringing about a fine balance between trade facilitation on one hand and enforcement requirements on the other.

Speed, transparency and efficiency

MCA-21 project aims to bring speed, transparency and efficiency in the delivery of the services rendered by the MCA to all the stakeholders through a set of pre-defined service levels.

Effective due diligence

Banks and Financial Institutions can conduct a through scrutiny of the documents filed by the company before advancing loan(s) and other financial assistance to such a company

Efficient services by professionals

Professionals will be able to offer efficient services to their client companies.

Environment Friendly

MCA-21 will also prove to be environment friendly since paper work involved in filing of forms and documents would be totally eliminated. One can imagine the quantum of paper required by lakhs of companies for filing almost all forms with their attachments on an annual basis. Elimination of paper work will ensure cutting of lesser number of trees. Hence the ecological balance will be sustained.

MCA SERVICES

MCA-21 is providing wide variety of services to its users for facilitating different compliance activities. MCA Services are broadly classified as follows:

1. DSC Services

A user can acquire Digital Signature Certificate (DSC), register DSC and update particulars of the DSC through the MCA Portal.

2. DIN Services

A user can enquire about the DIN status and verify DIN and PAN details of Director of the company.

3. Master Data

A user can view Master Data of a Company or an LLP, Index of Charges of the company, signatory details of a particular company, details of companies and directors under prosecution, details of Companies and LLP's registered in the last 30 days, master data of directors specifying the name of Companies/LLP's they are director/partner in, director/designated partner's details, etc.

4. LLP Services

A user can check LLP name, find LLPIN (Limited Liability Partnership Identification Number), avail services related to incorporation of an LLP, services related to annual e-Filing for an LLP, services related to change in LLP information and services related to closure of an LLP.

5. LLP Services for Business User

A business user can enter or update partner details of an LLP, enter Form 3 or Form 3 & 4 details for LLP filing and verify partner details for filing Annual Return.

6. E-Filing

A user can download LLP Forms or Company Forms from the Portal, submit application for PAN and TAN, upload e-forms, download Submitted Form for resubmission, check annual filing status of the company, upload details of security holders or debenture holders or depositors.

7. Company Services

A user can check company name, find CIN (Corporate Identity Number), services related to incorporation of a company, avail services related to compliance filing of a company, services related to change in company information, services related to charge management, informational services and services related to closure of a company.

8. Complaints

A user can raise service related complaints, track the complaints created, create investor/serious complaint, track the status of complaints created as 'investor/serious complaint', give feedback or suggestions to MCA-21 and raise employee grievances.

9. Document Related Services

A user can get certified copies of Forms and documents of a company, view forms and documents online etc.

10. Fee and Payment Services

A user can avail services through Enquire Fees, pay later, link NEFT payment, pay miscellaneous fee, pay stamp duty and track the payment status.

11. Public Search of Trademark

A user can search whether trademark has been registered or applied for a particular name by a company.

12. Investor Services

A user can search amount unclaimed/unpaid amount due to be transferred to the Investor Education and Protection Fund (IEPF), upload investor details, confirm uploaded files.

13. Track SRN/Transaction Status

A user can track the transaction status of the uploaded forms i.e., whether they are approved or pending for approval or required for resubmission or are rejected.

E-SERVICES

CENTRAL REGISTRATION CENTRE (CRC)

The Central Registration Centre (CRC) is an initiative of Ministry of Corporate Affairs (MCA) in Government Process Re-engineering (GPR) with the specific objective of providing speedy incorporation related services in line with global best practices.

CRC is presently tasked to process applications for name availability (INC-1) and forms related to new companies incorporations (INC-7/INC-32/INC-33/INC-34/INC-22 and DIR-12).

INCORPORATION OF COMPANY

After filing an application electronically through e-form, a company can be incorporated. Once company gets incorporated, CIN is allotted by the Registrar to the company.

Corporate Identity Number (CIN) / Foreign Company Registration Number (FCRN)

Every company has been allocated a Corporate Identity Number (CIN). CIN can be found from the MCA-21 portal through search based on:

- ROC Registration No.
- Existing Company Name
- Old Name of Company (in case of change of name, user is required to enter old name and the system displays corresponding current name).
- Inactive CIN [In case of change of CIN, the user is required to enter previous (inactive) CIN Number].

Each Indian company (Listed or Unlisted) has a unique 21 Digit CIN. This is required to be quoted on all e-forms. Once this number is filled, company details are automatically filled in E-Forms issued by MCA by using pre-fill function.

As stated above, CIN is a 21 digit number assigned to every company incorporated on or after November 1, 2000. The Corporate Identity Number allotted to a company indicates listing status, economic activity (industry), state, year of incorporation, ownership and sequential number assigned by ROC (Registration Number).

1 st Digit	Listing Status
Next 5 digits	Economic Activity (industry)
Next 2 digits	State
Next 4 digits	Year of Incorporation
Next 3 digits	Ownership
Last 6 digits	Sequential number assigned by ROC (Registration Number)

Foreign Company Registration Number (FCRN)

Every Foreign Company has been allotted a Foreign Company Registration Number (FCRN).

Corporate Identity Number (CIN), work as a unique identifier of an Indian company. Foreign Company Registration Number (FCRN) is a unique identifier in the case of a Foreign Company.

Global Location Number (GLN)

For foreign companies, Global Location Number (GLN) is allotted

Director Identification Number (DIN)

DIN means an identification number which the Central Government may allot to any individual, intending to be appointed as director or to any existing directors of a company, for the purpose of his identification as such and includes Designated Partnership Identification Number (DPIN) issued under section 7 of Limited Liability Partnership Act, 2008 and rules made thereunder.

All existing and any person intending to be appointed as a director are required to obtain the Director Identification Number (DIN). DIN is also mandatory for directors of Indian Companies who are not citizens of India. However, DIN is not mandatory for directors of foreign company having branch offices in India. Every individual, who is intending to be appointed as Director of a company or designated partner of a limited liability partnership is required to make an application electronically in Form DIR -3 to Central Government for obtaining Director Identification Number (DIN) or in case the company is being incorporated through Form INC-32, a maximum of three directors can apply for DIN. DIN is a unique identification number and once obtained is valid for life time of a director. A single DIN is required to be obtained irrespective of the number of directorships.

INTRODUCTION OF INTEGRATED PROCESS OF NAME RESERVATION, COMPANY INCORPORATION, DIN ALLOTMENT AND ISSUANCE OF PAN & TAN THROUGH SPICe (FORM INC-32) BY MCA-21

MCA-21 has introduced an integrated process through which reservation of name, incorporation of a new company, application for allotment of DIN and/or application for PAN and TAN can be applied simultaneously through a single application e-Form i.e. **Form INC-32 (SPICe)**.

After filing the SPICe Form and making payment the user is required to visit the MCA portal and access the service '**Submit application for PAN and TAN**'. He has to download Form 49A (PAN) and 49B (TAN) and upload them on the same screen after attaching his DSC. He has to upload these forms (PAN&TAN) within 2 days of filing the SPICe form failing which the entire SPICe form would be marked as '**Invalid and Not to be taken on record**'.

Once the e-Form is processed and found complete, company would be registered and CIN would be allocated. DIN gets issued to the proposed Directors who do not have a valid DIN. Maximum three proposed Directors are allowed using this integrated form for filing application of allotment of DIN while incorporating a company. Also PAN and TAN would get issued to the Company.

On approval of SPICe forms, the Certificate of Incorporation (COI) is issued with PAN as allotted by the Income Tax Department. An electronic mail with Certificate of Incorporation (COI) as an attachment along with PAN and TAN is also sent to the user. Further PAN card shall be issued by the Income Tax Department.

After receipt of Certificate of Incorporation (with PAN indicated therein as allotted by the Income Tax Department), in case of non-receipt of PAN card, stakeholders shall check the status at www.TIN-NSDL.com

Digital Signature Certificate (DSC)

The e-forms are required to be authenticated by the authorized signatories using digital signatures as defined under the Information Technology Act, 2000. A digital signature is the electronic signature duly issued by a certifying authority that shows the authority of the person signing the same. It is an electronic equivalent of a written signature. Every user who is required to sign an e-form for submission with MCA is required to obtain a Digital Signature Certificate. For MCA-21, the following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

- 1 MCA (Government) Employees.
- 2 Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers) who interact with MCA and companies in the context of Companies Act.
- 3 Authorized signatories of the Company including Managing Director, Directors, Manager or Secretary.
- 4 Representatives of Banks and Financial Institutions.

A person requiring a Digital Signature Certificate can approach any of the Certifying authorities identified by the MCA, with original supporting documents and self-attested copies, for issuance of Digital Signature Certificate. DSCs can also be obtained, wherever offered by CA, using Aadhar eKYC based authentication, and herein supporting documents are not required. Such Certifying Authorities are authorized to issue a Digital Signature Certificate with a validity of one or two years.

Registration of DSC is a onetime activity on the MCA portal. For registration of DSC, steps are given on the MCA Portal.

All companies (Public Company, Private Company, Company not having share capital, Company limited by share or guarantee, Unlimited Company) must comply with this requirement of registration of DSC by the director, manager and secretary.

Foreign directors are required to obtain Digital Signature Certificate from an Indian Certifying Authority (List of Certifying Authorities is available on the MCA portal). The process of registration of DSC is same as applicable to others.

Payment of Stamp Duty

Stamp duty is a state subject. It is payable on Memorandum and Articles of Association of every Company. In some states, duty is also payable on the authorized capital mentioned in the Memorandum of Association of the Company. States have authorized MCA to collect the stamp duty on their behalf and to remit the same to them.

Introduction of e-stamping facility by MCA and dispensation of physical submission thereof

For the purpose of making all transactions faster, improving service delivery and making office of the Registrar paperless, the process of physical submission of documents has been dispensed with. The Central Government shall initially collect the stamp duty on behalf of State Governments and Union Territories for specific purpose of e-filing of documents under the provisions of the Companies Act, 2013 and to remit the same directly to their accounts in accordance with the approved payment and accounting procedures.

At present, e-Forms to which e -Stamping is applicable are –

- (ii) Form SH-7
- (iii) Form FC-1
- (iv) Form GNL-4

The procedure for collection of stamp duty came into force w.e.f. 13th day of September, 2009. With effect from 1st April 2010, companies are compulsorily required to make payment electronically for stamp duty in respect of all the States which have authorised to the Central Government to collect the Stamp duty on their behalf. In respect of the State from whom the authorization is yet to be received, the Company shall continue to pay stamp duty outside the MCA portal.

The companies are not required to make physical submission of documents on which stamp duty is paid electronically through MCA portal. However, in respect of the documents on which stamp duty is not paid through

MCA portal, the Companies are required, in addition to their electronic filing, to submit physical copies of such stamped documents with Registrar of Companies also.

Simultaneously, there are documents other than those specified above which are not covered for payment of stamp duty through MCA portal and on which stamp duty payable in the respective State is equal to or less than one hundred rupees. Such stamped documents are required to be scanned by the company and filed electronically for evidencing by the Registrar and need not be submitted physically except those required to be filed for compounding of offence or adjudication of penalties or applications to Central Government or Regional Director in the physical form separately.

Rule 7 of Companies (Registration offices and fees) Rules, 2014 states in any law for the time being in force , the company shall retain such documents duly stamped in original permanently for the documents relating to incorporation and matters incidental thereto, changes in any of the clauses of the Memorandum and Article of Association and in other cases for a minimum period of eight years from the date of filing of the documents and shall be required to produce the same as and when the same is required for inspection and verification by the competent authority under any law for the time being in force.

The rates of stamp duty in the respective states may be revised through finance bill therefore, students are advised to refer to the latest rates of stamp duty.

Stamp duty can be paid through MCA-21 system with any of the option such as net banking, credit card, debit card, NEFT or offline with banks.

STP Forms (Rule 10)

STP stands for "Straight Through Process". Some e-forms are identified as informatory in nature. These forms are filed under Straight through process may be examined by the Registrar at any time on *suo- moto* or on receipt of any information or complaint from any source at any time after its filing . It means the information given in the e-forms is being taken on file maintained by the Registrar of Companies through electronic mode on the basis of statement of correctness given by the filing Company and further verification by the practicing professionals.

Re-submission (Rule 10)

Where the Registrar, on examining any such application or e-Form or document, finds it necessary to call for further information or finds such application or e-Form or document to be defective or incomplete in any respect, he shall give intimation of such information called for or defect or incompleteness noticed electronically, by placing it on the website and by e-mail on the last intimated e-mail address of the person or the company, which has filed such application or e-Form or document, directing him or it to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document. In case the e-mail address of the person or company in question is not available, such intimation shall be given by the Registrar by post at the last intimated address or registered office of such person or company, as the case may be. The Registrar shall preserve the fact of such intimation in the electronic record.

The Registrar shall give an opportunity allowing thirty days time to such person or such company for furnishing any further information, or documents called for, in respect of application or e-form or document, filed electronically in GNL-4, for rectification of the defects or incompleteness or for re-submission of such application or e-Form or document.

The Registrar shall allow fifteen days' time to the person or company, which has filed the application or e-Form or document for furnishing further information or for rectification of the defects or incompleteness or for re-submission of such application or e-form or document.

In case where such further information called for has not been provided or has been furnished partially or

defects or incompleteness has not been rectified or has been rectified partially or has not been rectified as required within the period allowed, the Registrar shall either reject or treat the application or e-form or document, as the case may be, as invalid in the electronic record, and shall inform the person or company, as the case may be. Where any document has been recorded as invalid by the Registrar, the document may be rectified by the person or company only by fresh filing along with payment of fee and additional fee, as applicable at the time of fresh filing, without prejudice to any other liability under the Act. [Rule 10 of the Companies (Registration Offices and Fees) Rules 2014]

Refund

The user is required to make various payments to avail MCA21 services. A number of instances have been observed where the users make multiple payments or incorrect payment or excess payment while using these services. In order to allow the stakeholders to claim refund of such payments, refund process has been introduced by MCA.

The Person is to file the 'Refund Form' available on MCA21 portal for claiming refund.

The refund of MCA21 fees is available in the following cases:

- (a) **Multiple Payments** – This includes cases where service seeker does multiple filings of eForm No. INC-7/old Form 1 or eForm No. SH-7/old Form 5 and makes payments more than once (multiple times) for the same service. However, refund shall not be allowed in respect of approved eForms.
- (b) **Incorrect Payments** – This includes cases where the service seeker has made payment in respect of an eForm or Stamp duty through an incorrect option under Pay miscellaneous fee facility.
- (c) **Excess Payment** – This includes cases where any excess fee has been paid by the service seeker due to some incorrect data entered in the eForm or incorrect data in MCA21 system due to migration of data from legacy system.

No refund is permitted of the stamp duty, the person is required to approach the concerned state/ union territory.

Refund process is not applicable for the following services/ eForms:

- Public Inspection of documents
- Request for Certified Copies
- Payment for transfer deeds
- Stamp duty fee (D series SRN)
- IEPF Payment
- STP Forms i.e. Form 20B, 23AC, 66, 21A, 23ACA, Form 14 – LLP (even for cases when the same were non STP earlier)
- Form No. DIR-3/old form DIN – 1

There is no fee for filing the refund form.

The refund form is to be filed within the stipulated time period. Also, there shall be deduction in the amount to be refunded based on time period within which refund e-Form is filed.

The mode of payment of refund shall be through cheque only. Later, provision for payment of refund through ECS will also be made available.

Online Inspection of Documents

The documents filed online, once taken on record by ROC Offices are available for public viewing on payment of requisite fees. These documents, which are in domain of public documents, include documents relating to

incorporation, charges, annual returns and balance sheets and change in directors. A certified copy of the documents can also be obtained by anyone so interested. For this purpose there is also an option to mention the number of pages in the document for which a certified copy is required as well as the number of copies required.

Inspection, production and evidence of documents kept by Registrar – Rule 14 of Companies (Registration offices and fees) Rules, 2014

The inspection of the documents maintained in the electronic registry so set up by MCA and which are otherwise available for inspection under the Act or rules made thereunder, shall be made by any person in electronic form.

Inspection of documents

(Rule 15 of Companies (Registration offices and fees) Rules, 2014

Any person may –

- Inspect any document kept by the Registrar, being documents filed or registered by him in pursuance of this Act or the Companies Act 1956(1 of 1956) or making a record of any fact required or authorized to be recorded or registered in pursuance of this Act, on payment for each inspection of fee.
- Require a certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment of fee.

It is further provided that no person shall be entitled under section 399 to inspect or obtain copies of resolutions referred to in clause (g) of sub- section (3) of section 117 of the Act.

ALL ABOUT FILLING AND FILING OF E-FORMS

E-forms

An e-form is only a re-engineered conventional form notified and represents a document in electronic format for filing with MCA authorities through the Internet. This may be either a form filed for compliance or information purpose or an application seeking approval from the MCA. Due to technical updates, these forms updates regularly, even though their user interface may not change. User always use latest e-forms from the MCA Portal.

Filling and filing of forms is an important part of the secretarial function of a company secretary. Normally, where company appoints a company secretary, he is designated as the officer responsible for compliance under the Companies Act and other allied legislations. Therefore, for any lapse in complying with the various provisions of the Companies Act or such other legislations, for the compliance of which the company secretary has been made responsible, he becomes liable as “officer in default”.

Filling and filing of forms, returns and applications under various provisions demand intimate knowledge of substantive as well as procedural law. The Registrar of Companies (RoC) registers the documents filed with them within the prescribed time, if found in order. Often, a large number of documents filed with the RoC are not taken on record due to technical lapses which result in avoidable correspondence and frequent visits to the office of RoC. In order to avoid such errors, every care should be taken to ensure that the forms are properly filled and adequate documents are attached to them before filing.

Company Secretaries, under electronic filing system are required to be familiar with computer, internet, MCA 21 electronic filing system, pdf files and using digital signatures.

PREREQUISITES FOR E-FILING ON MCA- 21

One also needs to get himself registered at the portal (www.mca.gov.in) and obtain a Director Identification Number (DIN) and a Digital Signature Certificate(DSC).

Hardware and Software Requirements under e-filing

The minimum system requirements for e-filing on MCA-21 are as under:

- P-4 computer with printer.
- Windows 2000/Windows XP/Windows Vista/Windows 7
- Internet Explorer 6.0 version and above, Google Chrome, Mozilla Firefox.
- Adobe Reader from version 9.4 to version 10.1.4
- Scanner (above 200 DPI) for converting the attachments in the PDF format; and
- Java Runtime Environment (JRE) 1.6 updated version 30.

IMPORTANT TERMS USED IN E-FILING

Pre-fill

Pre-fill is functionality in an e-Form that is used for filling automatically, the requisite data from the system without repeatedly entering the same. For example, by entering the CIN of the company, the name and registered office address of the company shall automatically be pre-filled by the system without any fresh entry.

Attachment

An attachment refers to a document that is sent as an enclosure with an e-Form by means of an attached file.

The objective of the attachment is to provide details relevant to the e-Form for processing. While some attachments are optional, some are mandatory in nature.

The attachments to an e-Form have to be in Adobe PDF format only and My MCA portal has a facility to convert any document format to PDF format. My MCA portal do not accept big attachments and the users are advised to keep the attachment size to minimum (Not exceeding 2.6 MB of the total size of the Form including attachments).

Modify

Once the user has done “Check Form” the form gets locked and it cannot be edited. If the user wishes to make any alteration, the form can be overwritten by clicking the “Modify” button.

If the user wants to modify the form after pre-scrutiny failure, the user can get the e-form and whichever fields have to be changed only those may be modified by using the “Modify” button.

Radio Button

Frequent use of radio buttons has been done in the e-Form. While filling the e-Form one is required to tick applicable button out of two or more radio buttons given against each point.

Check Box

Applicable Check box is required to ticked out of the two or more boxes wherever it appears in the e-Form.

Drop Down Box

Drop down box is a box wherein at the end, a downward arrow is provided. On clicking the arrow various applicable choices appear. One is required to highlight the applicable choice and that will be filled in the box.

Text box

Text box is meant to provide details on the relevant point by the person filling the e-form. Space provided is

generally adequate for the text to be written. However, if the space is not sufficient for a particular matter, information can be given in the annexure to the form indicating the same in the box.

Country Code

Sometimes the applicant is required to fill up the country code in the e-Form. This is available in the instruction kit.

Stock Exchange Code

All the stock exchanges of the country have been divided into two categories A and B. Listed companies are required to mention the stock exchange where the shares are listed with the help of the code.

Check Form

By clicking “Check Form”, the user will be in a position to find out whether the mandatory fields in an e-Form are duly filled-in. For example, if the user enters alphabets in “Date of Appointment of Director” field, he/she will be asked to correct the entered information.

If the size of e-Form including attachment is of bigger size then the attachment may be filed through an addendum.

If the size of attachment is even bigger in size then the details may be submitted in a floppy or compact disc at the ROC office.

Pre-Scrutiny

Pre-scrutiny is a functionality that is used for checking whether certain core aspects are properly filled in the e-Form. The user has to make the necessary attachments in PDF format before submitting the e-Form for prescrutiny.

How to Affix Digital Signature?

The process of affixing digital signature is as follows:

- (a) User clicks the provision provided (signature affixing icon) on the e-Form, against his role, to digitally sign it.
- (b) Utility to sign the e-Form opens, where user selects the intended certificate to digitally sign the e-Form.
- (c) After selecting the certificate, utility digitally signs the e-Form with the certificate and the certificate information gets embedded in the e-Form.

Submit

An e-Form can be submitted after it has been digitally signed. The process of submission of an e-Form in case of off-line filling is presented below:

- (a) User logs in to MCA21 portal and uses e-Form upload service
- (b) User browses the e-Form and clicks on “Submit” button
- (c) User will be shown errors, if any
- (d) If e-Form is successfully submitted, user will get confirmation message and will be lead to the fee payment screen.

The digital certificate is validated to ensure that the certificate has not expired and the current status of the same is valid and that the certificate has not been revoked or suspended.

Addendum to e-Form

The user may have to submit some additional supporting documents that are not submitted during the e-Form (application) filing but are required for the processing of the e-Form. MCA may also ask the applicant to provide some additional documents in support of the e-Form already filed so as to expedite the processing of the same.

The user can initiate this on their own by checking the track transaction status on My MCA portal or on being notified by MCA through email. Payment of fees is not required for filing an addendum.

The supporting documents that the applicant uploads, as an addendum, gets duly associated with the e-Form that was submitted earlier with the given Service Request Number (SRN).*

The normal process of filing an addendum is presented below:

- (a) The applicant enters SRN for which document needs to be attached.
- (b) The applicant attaches relevant document and clicks "Submit".
- (c) The system verifies that the status of entered SRN is "In Progress" and the submitted document gets accepted.

Service Request Number (SRN)

Each transaction under e-filing is uniquely identified by a Service Request Number (SRN). On filing of an e-form, the system generates and provides a nine character alphanumeric string starting with an alphabet (A-Z), called a Service Request Number (SRN). A user can check the status of the document/transaction, by entering the SRN.

PRE-CERTIFICATION OF CERTAIN E-FORMS [RULE 8(12)]

Apart from authentication of e-forms by authorized signatories using digital signatures, some e-forms are also required to be pre-certified by practicing professionals. Pre-certification means certification of correctness of any document by a professional before the same is filed with the Registrar.

Ministry of Corporate Affairs has entrusted practicing professionals registered as Members of professional bodies namely ICAI, ICSI and ICWAI with the responsibility of ensuring integrity of documents filed by them with MCA in electronic mode including filing of financial statements in XBRL mode.

This pre-certification is to be carried out by *inter-alia*, Company Secretaries or chartered accountant or as the case may be the Cost Accountant in whole-time practice. The forms filled by companies, other than OPC and small companies which has to be pre-certified by practising professionals include the following :

1. **FORM No. INC-32** (Simplified Proforma for Incorporating Company Electronically)
2. **FORM No. INC-22** (Notice of situation or change of situation of registered office)
3. **FORM No. INC-27** (Conversion of Public Company into Private Company or Private Company into Public Company and Conversion of Unlimited Liability Company into a Company limited by shares or guarantee or Conversion of Guarantee Company into a Company limited by shares)
4. **FORM No. INC-28** (Notice of Order of the Court or any other competent authority)
5. **FORM No. PAS- 2** (Information Memorandum)
6. **FORM No. PAS-3** (Return of allotment)
7. **FORM No. SH-7** (Notice to Registrar of any alteration of share capital)
8. **FORM No. SH-11** (Return in respect of buy back of securities)

9. **FORM No. CHG-1** (Application for registration of creation, modification of charge (other than those related to debentures) including particulars of modification of charge by Asset Reconstruction Company in terms of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI))
10. **FORM No. CHG-4** (Particulars for satisfaction of charge thereof)
11. **FORM No. 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)
12. **FORM No. MGT-7** (Annual Return)
13. **FORM No. MGT-10** (Changes in shareholding position of promoters and top ten Shareholders)
14. **FORM No. MGT-14** (Filing of Resolutions and agreements to the Registrar)
15. **FORM No. DIR-3** (Application for allotment of Director Identification Number)
16. **FORM No. DIR-3C** (Intimate information of directors, managing director, manager and secretary by an Indian Company)
17. **FORM No. DIR-5** (Application for surrender of Director Identification Number)
18. **FORM No. DIR-6** (Intimation of change in particulars of Director to be given to the Central Government)
19. **FORM No. DIR-12** (Particulars of appointment of Directors and the key managerial personnel and the changes among them)
20. **FORM No. MR-1** (Return of appointment of managerial personnel)
21. **FORM No. MR-2** (Form of application to the Central 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)
22. **FORM No. URC-1** (Application by a company for registration under section 366 – Conversion from firm into company and LLP into company)
23. **FORM No. GNL-1** (Form for filing an application with Registrar of Companies)
24. **FORM No. GNL-3** (Particulars of person(s) or Key managerial personnel charged or specified for the purpose of sub- clause (iii) or (iv) of clause 60 of Section 2)
25. **FORM No. GNL-4** (Form for filing addendum for rectification of defects or incompleteness)
26. **FORM No. NDH-1** (Return of statutory compliances)
27. **FORM No. NDH-2** (Application for extension of time)
28. **FORM No. NDH-3** (Half yearly Return)
29. **FORM No. MSC-1** (Application to ROC for obtaining the status of dormant company)
30. **FORM No. MSC-3** (Return of dormant companies)
31. **FORM No. MSC-4** (Application for seeking status of active company)
32. **Form No. AOC-4 XBRL** (Form for filing XBRL document in respect of financial statement and other documents with the Registrar)
33. **FORM No. 23AC-XBRL** (Form for filing XBRL document in respect of balance sheet and other documents with the Register)
34. **Form No. 23ACA-XBRL** (Form for filing XBRL document in respect of profit and loss account and other documents with the Register)

35. Form STK-2 (Application by company to ROC for removing its name from register of companies)**Necessity of Pre-certification**

Introduction of pre-certification by an independent professional in the e-Form aimed at reducing the work load of the Registrar of Companies. Once an e-Form has been pre-certified by a professional towards its authenticity based on the particulars contained in the books of accounts and records of the company, ROC is entitled to take on record the e-Form. Professionals are responsible for submitting/certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry. If a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under section 447 and 448 of the Companies Act, 2013 besides disciplinary action by the Institute which issued the Certificate of Practice.

Fees (Rule 12 of Registration Offices and Fees)

The documents required to be submitted, filed, registered or recorded or any fact or information required or authorized to be registered under the Act shall be submitted, filed, registered or recorded on payment of the fee or on payment of the fee or on payment of such additional fee as applicable, as mentioned in Table annexed to these rules.

For the purpose of filing the documents or applications for which no e-form is prescribed under the various rules prescribed under the Act, the document or application shall be filled through **Form No. GNL.1 or GNL.2** along with fee as applicable and in case a single form is prescribed for multiple purposes, the fee shall be paid for each of the purpose contained in the single form.

For the purpose of filing information to sub-clause (60) of section 2 of the Act, such information shall be filed in **Form No. GNL.3** along with fee as applicable.

Mode of Payment (Rule 13 of Registration Offices and Fees)

The fees, charges or other sums payable for filing any application, form, return or any other document in pursuance of the Act or any rule made thereunder shall be paid by means of credit card; or internet banking; or remittance at the counter of the authorised banks or any other mode as approved by the Central Government.

GUIDELINES FOR FILLING AND FILING E-FORMS

While preparing the forms, documents, returns to be filed with the Registrar, the following points are to be kept in view:

- (a) Each time we are required to file an e-Form, we should download the Form from the MCA site to avoid the wastage of time at a later stage because the forms are under revision and a slight change in the form will result in it not getting uploaded at the stage of submitting on the portal.
- (b) An e-Form contains certain standardized features. It starts with the Corporate Identity Number (CIN), which works as a unique identifier of a company (in the case of an Indian Company). In the case of foreign company, the foreign company Registration Number is required to be filled-up. By entering the number, the company details to the extent these are available in static form in the database are automatically filled in by using the pre-fill functionality.
- (c) The e-Form contains a number of mandatory fields, marked with the red color star (*) which are required to be filled in. Certain other fields are non-mandatory in nature, which may be filled in as may be relevant in any particular case.
- (d) An e-Form contains tool tips for context sensitive help.
- (e) An instruction kit is available for each e-Form, which contains details of the instructions for properly filling the e-Form. It is important to go through it before filing the e-form.

- (f) An e-Form may be filled in either online or offline mode. Online filling implies that the e-Form is filled while being still connected to MCA portal through the Internet. Offline filling denotes that the e-Form is downloaded into the user's computer and filled later without being connected to the Internet.
- (g) An e-Form may require certain mandatory attachments to be filed along with it. Optional attachments may also be filed with an e-Form. The list of such attachments is displayed in the e-Form.
- (h) All documents/forms/returns, etc., are to be submitted in English or Hindi and where a document is in any language other than English and Hindi, a translation of that document or portion into either English or Hindi certified by a responsible officer of the company to be correct, shall be attached to each copy of the document which is furnished to the Registrar. All such documents shall be converted into pdf format.
- (i) Next to attachment, there is a declaration that is sought from the person filing the e-Form to the effect that the information given in the e-Form and the attachments is correct and complete.
- (j) Most of the e-Forms require the digital signature of the Managing Director or Director, Manager or Secretary of the company for successful filing/ submission.
- (k) Scanned documents take more space and as far as possible MS-word file converted into pdf file is preferred.
- (l) All electronic forms require, the date of board meeting to be specified under the head verification. In the said column, the date of the board meeting at which the person is authorised to sign and submit form shall be specified. Where it is mentioned in the form that it has to be signed by specific person, it should be so digitally signed.
- (m) Further, the digital signature of a third party may also be required in certain cases. In the case of an e-Form for creation or modification of charges, such digital signature is also required from the Bank or Financial Institution.
- (n) In certain cases, a certificate from the Chartered Accountant or Cost Accountant or Company Secretary in whole-time practice is also required to authenticate the particulars contained in the e-Form. For example, this requirement is mandatory in the case of an e-Form for appointment of director, change in the situation of the registered office, etc.
- (o) There are built-in facilities to check the filled in e-Form for requisite validations, to do pre-scrutiny and to modify the e-Form when the same is required to be re-submitted.
- (p) Certain documents need physical filing in addition to e-filing. It needs to be noted that those should preferably be free from corrections and erasure. If there is any correction or erasure, it should be duly authenticated by the person signing the document or the return.
- (q) After the filling part is complete, the e-Form is ready for submitting into the MCA central documentary repository and when the Submitted button is pressed, the e-Form gets uploaded into the MCA central document repository.
- (r) Thereafter, the requisite fees as applicable for the e-Form should be paid either on-line or off-line.
- (s) Once the e-Form has been accepted and payment of fees has been acknowledged, a work item is created and assigned to the appropriate MCA employee based on pre-defined assignment rules as part of MCA back office workflow automation.
- (t) In the case of an e-Form, the authorized officer affixes his/her digital signature for registering/approving/ rejecting the same.
- (u) After the processing of the e-Form is completed, an acknowledgement email is sent to the user regarding its approval/rejection.

Once the e-form is filled, there would be need to validate the e-form using Pre-scrutiny button. Then the relevant digital signatures have to be affixed and the form be saved. Internet connection is required to carry out the pre-fill and pre-scrutiny functions. The filled up e-form as per relevant instruction kit needs to be uploaded on the MCA21 portal. On successful upload, the Service request number would be generated and it would be directed to make payment of the statutory fees. Once the payment has been made the status of payment made and filing status can be tracked on the MCA21 portal by using the “Track Your Payment Status” and “Track Your Transaction Status” link respectively.

IMPORTANT ASPECTS TO BE CONSIDERED AT THE TIME OF ANNUAL FILING

As a part of annual filing, each year companies incorporated under the Companies Act, 2013 are required to file the following documents along with the relevant e-forms with the Registrar of Companies:

XBRL Filing

XBRL (Extensible Business Reporting Language) is a language for the electronic communication of business and financial data which is revolutionizing business reporting around the world. It helps in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data.

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 as per Annexure-I:-

- (i) companies listed with stock exchanges in India and their Indian subsidiaries;
- (ii) companies having paid up capital of five crore rupees or above;
- (iii) companies having turnover of one hundred crore rupees or above;
- (iv) 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.”.]

However, the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies are exempted from XBRL filing till further orders. Key benefits of XBRL filing are as under:

Relevant data has tags and selective information can be fetched for specific purposes by various government and regulatory agencies

It is in conformity with Global Reporting Standards, which helps in improved data mining and relevant information search.

Steps for filing Financial Statements in XBRL mode

1. Creation of XBRL instance document

Companies have the option to create their own XBRL documents in house or to engage a third party to convert their financial statements into XBRL form. The first step in creation of an instance document is to do tagging of the XBRL taxonomy elements with the various accounting heads in the books of accounts of the company.

This would create the mapping of the taxonomy elements with the accounting heads so that the accounting information can be converted into XBRL form.

Mapping is the process of comparing the concepts in the financial statements to the elements in the published taxonomy, assigning a taxonomy element to each accounting concept published by the company.

Selecting the appropriate elements for some financial statement elements may require a significant amount of judgment. For that reason those in the company who are most familiar with the financial statements should be associated with mapping of accounting concepts to taxonomy elements. The mapping should be reviewed before proceeding further as the complete reporting would be dependent on the mapping.

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In case any information is present in the financial statements for which corresponding tag/element is not available in the taxonomy, then the same needs to be captured in the next-best-fit element in the taxonomy or should be included under the corresponding “Others” element. This should be followed only in case the relevant tag is not available in the taxonomy. It should not to be used generally.

Further, it is imperative to include footnote w.r.t. the same while preparing the instance document. For tagging or capturing the information which is often included in brackets in the labels in the company’s financial statements, can either be captured as footnote or if detailed tags are available, the same should be tagged with the detailed tags in the taxonomy.

The complete information as contained in the annual accounts and related documents; and the information required to be filed with the Registrar of Companies should be reported in the XBRL instance documents to be submitted with MCA. For preparing instance document, the taxonomy as applicable for the relevant financial year is to be used.

1. Download XBRL validation tool from MCA Portal
2. Load the instance document in the validation tool
3. Validate the instance document
4. Pre-scrutiny of the instance document
5. Convert to pdf and verify the contents of the instance document. (This step is essential to ensure that the disclosures contained in XBRL document are as per Audited Financial Statement adopted in the AGM and the textual information entered in the instance document are clearly viewable)
6. Attach instance document to the Form 23AC-XBRL and 23ACA-XBRL or From AOC-4 (XBRL)
7. Submitting the XBRL Form on the MCA portal
8. Viewing of balance sheet and profit and loss submitted in XBRL form on MCA portal.

Common Points for all the annual e-Forms

- Balance sheet and Profit and Loss Account are to be filed as two separate documents with different eforms.
- Annual Return, Balance Sheet and Profit and Loss Account are filed as attachments because scanned images considerably increase the size of document, besides being more expensive.
- It is suggested that these e-Forms should be filled offline and got printed before filing as these forms are taken on record through electronic mode without any processing at the RoC office. The Company must ensure that the particulars filed are correct. Further, there is no provision of resubmission of these e-Forms.
- In case of a company having share capital, the authorized capital as on the date of filing of the e-form and in case of company without share capital, the number of members as on the date of filing of the form should be entered in the e-Forms.
- After filing, the e-form should be pre-scrutinised by clicking the Prescrutiny button or else, it shall be rejected at the time of uploading of form.
- No attachment can be submitted through the addendum service in respect of these e-forms.

DESCRIPTION OF E-FORMS

The Central Government has provided all the e-forms as an annexure to the relevant Rules. Important aspects with respect to each e-form are provided hereunder:

E- Form No.	Description of e-Form	Relevant Section	Relevant Rule	Pre-Certification	Attachments
INC-3	One Person Company-Nominee Consent Form	3(1)	4(2), (3), (4), (5) & (6) of Chapter II	NO	-

INC- 4	One Person Company - Change in Member/Nominee	3(1)	4(4), 4(5), 4(6) of Chapter II	NO	<p>* (1) Consent of the nominee in Form NO. INC-3</p> <p>* (2) Copy of PAN card of the new nominee and/or new member</p> <p>* (3) Proof of identity of the new nominee and/or new member</p> <p>* (4) Residential proof of the new nominee and/or new member</p> <p>(5) Notice of withdrawal of consent filled by the nominee</p> <p>(6) Copy of intimation given by member for change in nominee</p> <p>(7) Proof of Cessation of member</p> <p>(8) Optional attachment(s)- if any</p>
INC-5	One person company- Intimation of exceeding threshold	-	6(4) of Chapter II	NO	<p>* 1. Copy of board resolution authorizing giving of notice;</p> <p>* 2. Copy of the duly attested latest financial statement;</p> <p>3. Certificate from chartered accountant in practice for calculation of the average annual turnover during the relevant period in case of conversion is on the basis of such criteria;</p> <p>4 Optional Attachment(s) if any.</p>
INC-6	One Person Company- Application for Conversion	18	7(4) of Chapter II	NO	<p>1. * Altered Memorandum of association</p> <p>2. * Altered Articles of association</p> <p>3. * Copy of the duly attested latest financial statement.</p> <p>4. * Copy of board resolution authorizing giving of notice;</p> <p>5 Certificate from a chartered accountant in practice for calculation of the average annual turnover during the relevant period in case of conversion is because of exceeding average annual turnover.</p> <p>6. Affidavit confirming that all the members of the company have given their consent for conversion and the paid up capital of the company is Rs. 50 lakhs or less and turnover is less</p>

				<p>than Rs 2 crores in the immediately preceding year.</p> <p>7. Copy of minutes, list of creditors and list of members.</p> <p>8. Copy of NOC of every creditors</p> <p>9. Consent of the nominee in Form No. INC-3 along with all enclosures</p> <p>10. Copy of PAN card of the nominee and member</p> <p>11. Proof of identity of the nominee and member.</p> <p>12. Residential proof of the nominee and member.</p> <p>13. Optional attachment(s)- if any</p>

INC-12	Application for grant of License under section 8	8(1) & 8(5)	19, 20 of Chapter II	NO	<p>Attachments 1) *Draft Memorandum of association as per form no. INC.13</p> <p>2) *Draft Articles of Association</p> <p>3) *Declaration as per Form No. INC.14</p> <p>4) *Declaration as per Form No. INC.15</p> <p>5) *Estimated income and expenditure for next three years</p> <p>6) Approval/concurrence/NOC of the concerned authority/sectoral regulator, department or Ministry of the Central or State Government(s)</p> <p>7) Entrenched articles of association</p> <p>8) Copy of resolution passed in general meeting and board meeting</p> <p>9) last one/two year's financial statement(s), board's report(s) and Audit report(s)</p> <p>10) Assets and liabilities statements with their values as per applicable rule</p> <p>11) List of proposed promoters.</p> <p>12) List of proposed directors/ directors.</p> <p>13) List of key managerial personnel.</p> <p>14) Optional attachment, if any</p>
INC-18	Application to Regional Director for conversion of section 8 company into company of anyother kind	8(4)(ii)	23 of Chapter II	NO	<p>1. * Memorandum of association;</p> <p>2. * Articles of association;</p> <p>3. * Copy of board resolution(s);</p> <p>4. * Copy of the special resolution passed and Notice convening the general meeting along with the relevant explanatory statement annexed thereto;</p> <p>5.* Certificate from CA/CS/CWA (in practise) certifying that the conditions laid down in the Act and rules, have been complied with;</p>

				<p>6. *Statement of assets and liabilities of the company as on the date not earlier than thirty days of that date duly certified by the auditor;</p> <p>7. *Copy of valuation report by a registered valuer about the market value of assets;</p> <p>8.* Audited financial statements, the Board's reports, annual returns and the audit reports for each of the two financial years immediately preceding the date of the application or, where the company has functioned only for one financial year, for such year;</p> <p>9. Statement of financial position if applicable;</p> <p>10. Full details of fixed assets alienated if any,during the preceding three financial years;</p> <p>11. Written consent of the lenders, if any loan is outstanding;</p> <p>12. NOC from the concerned authority in case special status is mandatory when the company has obtained any special status/ privilege</p> <p>13.Proof of payment of differential amount is mandatory if the company has acquired any immovable property through lease or otherwise from any Government or authority or body corporate or person since incorporation at concessional rate or free of cost.</p> <p>14. Details of donation/grant/benefit received since incorporation of company is mandatory if company has received any donation and/or grant/benefits from any person or authority since incorporation.</p> <p>15.Copy of NOC received from sectoral regulatory authority is mandatory if company is being regulated by any sectoral regulator.</p>
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					16. NOC from all the creditors 17. Optional attachments(s)
INC-20	Intimation to Registrar of revocation / surrender of license issued under section 8	8(4) and 8(6)	23 of Chapter II	NO	1)* Copy of order of Central Government 2)* Copy of altered Memorandum and articles of Association 3) Declaration of directors for compliance of conditions in case of surrender of license. 4) Optional attachments -if any
INC-22	Notice of situation or change of situation of registered office	12(2) & (4)	25 and 27 of Chapter II	YES	(1) *Proof of Registered Office address (Conveyance/Lease deed/ Rent Agreement along with the rent receipts) etc.;; (2)* Copies of the utility bills as mentioned above (not older than two months); (3) *A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/ Person (not taken on lease by company); I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed. (4) List of all the companies (specifying their CIN) having the same registered office address, if any; (5) Optional attachment, if any
INC-23	Application to the Regional Director for approval to shift the Registered office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State	12(5) and 13(4)	28 and 30 of Chapter II	NO	1.* Copy of Memorandum of Association and Articles of Association 2. *Copy of notice of the general meeting along with relevant explanatory statement; 3. * Copy of special resolution sanctioning alteration; 4.* Copy of the minutes of the general meeting authorizing such alteration; In case registered office is shifted from one state to another 5. List of creditors and debentureholder

					<p>6. *Power of attorney/vakalatnama/ Board resolution;</p> <p>7. *Affidavit from Directors in terms of Rules;</p> <p>8. *Affidavit verifying the application;</p> <p>9.* Affidavit by the company secretary of the company and the directors in regards to the correctness of list of creditors and affairs of the company;</p> <p>10. *Affidavit by directors about no retrenchment of the employees;</p> <p>11. *Copy of newspaper advertisement for notice of shifting the registered office;</p> <p>12. *Affidavit verifying the list of creditors;</p> <p>13. Proof of service of the application to the Registrar, Chief secretary of the state, SEBI or any other regulatory authority, (if applicable);</p> <p>14. Copy of objections, (if received any);</p> <p>15. Optional attachment(s), if any</p>
INC-24	Application for approval of Central Government for change of name	13(2)	29(2) of Chapter II	NO	<p>1. *Minutes of the members' meeting</p> <p>2. Approval order obtained from the concerned authorities (such as RBI, IRDA, SEBI etc).</p> <p>3. If name change is due to change in main activity of company, a certificate from chartered accountant regarding turnover details from new activity.</p> <p>4. Optional attachment(s) (if any)</p>
INC-27	Conversion of public company into private company or private company into public company and conversion of unlimited liability company into a company limited by shares or	14 & 18	33, 37 & 39 of Chapter II	YES, in case of conversion of unlimited liability company to limited liability company	<p>1. *Minutes of the member's meeting</p> <p>2. *Copy of Special Resolution</p> <p>3. *Copy of Altered Articles of Association;</p> <p>4. copy of order for condonation of delay in case form is filed after the prescribed due date;</p> <p><i>In case of Conversion of Unlimited Liability Company to Limited Liability Company</i></p> <p>5. *Copy of Altered Memorandum of</p>

	guarantee or conversion of guarantee company into a company limited by shares				<p>Association</p> <p>6. *Declaration of all Directors as per Rule 37(3)(e) and Rule 37(3)(g)</p> <p>7. *Complete list of creditors and debenture holders</p> <p>8. *Declaration of Solvency</p> <p>9. *Declaration regarding no complaints as per Rule 37(4)</p> <p>10. *Statutory Auditors Certificate</p> <p>11. *Copy of Newspaper</p> <p><i>In case of conversion from public company to private company</i></p> <p>12. *Order of competent authority</p> <p>Optional attachment(s).</p>
INC-28	Notice of Order of the Court or Tribunal or any other competent authority	12(6), 13(7), 58(5), 87, 111(5), others	–	YES	<p>1* Copy of court order or NCLT or CLB or order by any other competent authority</p> <p>2. Optional attachment(s) - if any</p>
SPICE (INC-32)	Simplified Proforma for Incorporating Electronically	4, 7, 12, 152 & 153	38	YES	<p>1. *Affidavit and declaration by first subscriber(s) and director(s)</p> <p><i>In case of section 8 company or company Company with foreign subscribers not having DIN:</i></p> <p>2. *Memorandum of Association</p> <p>3. *Articles of Association</p> <p><i>If address for correspondence is address of registered office of company :</i></p> <p>4. *Proof of office address</p> <p>5. *Copies of utility bills that are not older than two months.</p> <p><i>If proposed name requires approval of Central Government :</i></p> <p>6. *Copy of approval if proposed name contains any word(s) or expression(s) which requires approval from Central Government.</p> <p><i>If proposed name is based on registered trademark or is subject to an application pending for registration under Trade Marks Act:</i></p>

				<p>7. *Approval of owner of trademark or applicant of such trademark for registration of Trademark.</p> <p><i>If promoters are carrying on any Partnership firm, sole proprietary or unregistered entity in the name as applied for:</i></p> <p>8.* NOC from sole proprietor/ partners/other associates/ existing company.</p> <p><i>If proposed name requires approval from any sectoral regulator:</i></p> <p>9. *In principle approval from concerned regulator.</p> <p><i>If any subscriber to proposed company is Foreign company and/or company incorporated outside India:</i></p> <p>10. *Copy of certificate of incorporation of foreign body corporate and resolution passed</p> <p>Note: It is optional to attach Copy of certificate of incorporation in case subscriber to proposed company is Body Corporate.</p> <p><i>If any subscriber to the proposed company is a Company itself:</i></p> <p>11. *Resolution passed by promoter company</p> <p><i>In case name is similar to any existing company:</i></p> <p>12. *A certified true copy of No objection certificate by way of board resolution / resolution</p> <p><i>In case any director has any interest in proposed company:</i></p> <p>13. *Interest of first director(s) in other entities</p> <p><i>In case of an OPC:</i></p> <p>14. *Consent of nominee</p> <p>15. *Proof of identity and residential address of the nominee</p> <p><i>If any one of the subscriber does not have</i> <i>DIN:</i></p>
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					<p>16. *Proof of identity and residential address of subscribers</p> <p><i>If any of the director (including subscriber cum director) does not have DIN:</i></p> <p>17. *Proof of identity and residential address of such director</p> <p><i>If SRN of INC-1 is mentioned in form and any person mentioned in INC-1 as promoter is not subscribing to MOA, then attach:</i></p> <p>18. NOC in case there is change in promoters (first subscribers to MOA).</p> <p>19. Optional Attachment(s) if any.</p>
PAS-2	Information Memorandum	31(2)	10 of Chapter III	YES	Optional attachment(s), if any
PAS-3	Return of Allotment	39(4) and 42(9)	12 and 14 of Chapter III	YES	<p>1* List of allottees. Attach separate list for each allotment. If not attached, then it shall be submitted separately in a CD.</p> <p>2.* Copy of Board or shareholders' resolution.</p> <p>3. Valuation Report from the valuer, if any;</p> <p>4. Copy of contract or complete particulars of contract in case securities are issued other than case;</p> <p>5. Copy of the special resolution authorizing the issue of bonus shares.</p> <p>6. Complete record of private placement offers and acceptances in Form PAS-5.</p> <p>7. Optional attachment(s), if any</p>
PAS- 4	Private Placement Offer Letter	42	14(1) of Chapter III	NO	<p>1. Copy of board resolution</p> <p>2. Copy of shareholders resolution</p> <p>3. Copy of Optional attachments, if any</p>
SH-7	Notice to Registrar of any alteration of share capital	64(1)	15 of Chapter IV	YES	<p>1. Copy of the resolution for alteration of capital;</p> <p>2. Copy of order of central government is mandatory in case of increase in share capital with central Government order.</p>

					<p>3. Copy of the order of the tribunal is mandatory in case of increase in share capital with Central Government.</p> <p>4. Certified true copy of board resolution authorizing redemption of redeemable preference shares is displayed and mandatory in case of redemption of redeemable preference shares.</p> <p>5. Altered memorandum of association is mandatory in case of increase in share capital independently or by order of Central Government or increase in number of members.</p> <p>6. Altered articles of association is mandatory in case the same are altered.</p> <p>7. Working for calculations of ratios (in case of conversions) is mandatory in case of increase in share capital with central government order.</p> <p>8. Optional attachments – if any</p>
SH-8	Letter of Offer	68	17(2) of Chapter IV	NO	<p>1.* Details of the promoters of the company</p> <p>2. *Declaration by auditor(s)</p> <p>3. *Copy of the board resolution</p> <p>4. *Copy of the notice issued under section 68(3) along with the explanatory Statement thereto,</p> <p>5.* Audited financial statements of last three years</p> <p>6. Buy back details of last three years</p> <p>7. Management discussion and analysis (in case of listed company);</p> <p>8. List of holding and subsidiary companies of the company;</p> <p>9. Unaudited financial statement (if applicable);</p> <p>10. Statutory approvals received (if any);</p> <p>11. Details of the auditor, legal</p>

					advisors, bankers and trustees if any; 12. Optional attachments if any
SH-9	Declaration of Solvency	68(6)	17(3) of Chapter IV	NO	(1) *Copy of board resolution (2) *Statement of assets and liabilities (3) *Auditor's report (4) *Affidavit as per rule 17(3) (5) Copy of Special Resolution (6) Optional Attachments, if any
SH-11	Return in respect of buy back of securities	68(10)	17(13) of Chapter IV	YES	(1) *Description of shares or other specified securities bought back (2)* Particulars relating to holders of securities before buy-back (3) *Copy of board resolution (4) *Balance sheet of the company (5) *Certificate of compliance of buy-back rules according to rule 17(14) (6) Copy of special resolution passed in case date entered in field 8(6) of form. (7) Optional attachments, if any
DPT-1	CIRCULAR OR CIRCULAR IN THE FORM OF ADVERTISE- MENT INVITING DEPOSITS	73 (2)(a) & 76	4(1) and 4(2) of Chapter V	—	—
DPT- 3	Return of deposits		16 of Chapter V	NO	1. Auditor's certificate; 2. Deposit Insurance contract – Mandatory if company has deposit insurance and details of same are mentioned in the form 3. Copy of trust deed – Mandatory if company has trust deed and details of same are mentioned in the form 4. Copy of instrument creating charge – Mandatory if company has trust deed and details of same are mentioned in the form 5. List of depositors; 6. Details of liquid assets; 7. Optional attachment, if any.

DPT-4	Statement regarding deposits existing on the commencement of the Act		20 of Chapter V	NO	<ol style="list-style-type: none"> 1. * Auditor's certificate; Optional attachment, if any. 2.* List of depositors; 3. Deposit Insurance contract if company has deposit insurance 4. Copy of trust deed if company has trust deed 5. Copy of instrument creating charge if company has trust deed 6. Optional attachment, if any
CHG-1	Application for registration of creation, modification of charge (other than those related to debentures) including particulars of modification of charge by Asset Reconstruction Company in terms of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI)	77, 78 and 79 & 384	3(1) of Chapter VI	YES	<ol style="list-style-type: none"> 1. * Instrument(s) of creation or modification of charge; 2. Instrument(s) evidencing which is already subject to chargesuch acquisitions. This attachment is mandatory in case if there is any acquisition of property which is already subjected to charge. 3. Particulars of all joint charge holders. It is mandatory if number of charge holder is more than one. 4. Optional attachment(s)- if any.
CHG-4	Particulars for satisfaction of charge thereof	82(1)	8(1) of Chapter VI	YES	<ol style="list-style-type: none"> 1. *Letter of the charge holder stating that the amount has been satisfied 2. Optional attachment(s) – if any
CHG-6	Notice of appointment or cessation of receiver or manager	84(1)&384	9 of Chapter VI	NO	<ol style="list-style-type: none"> 1. *Copy of instrument appointing receiver/manager; 2. *Copy of court order; 3. *List of specified property of the company in case the appointment relates to specified property of the company 4. *List of specified property of the company in case the appointment

					relates to income arising from specified property of the company. 5. Optional attachment(s), if any
CHG-8	Application to Central Government for extension of time for filing particulars of registration of creation / modification / satisfaction of charge OR for rectification of omission or misstatement of any particular in respect of creation/ modification/ satisfaction of charge	77(1) read with 87	12(2) of Chapter VI	NO	1. *Instrument creating/modifying/satisfying the charge; 2. Letter of authorization (in case of Authorised Representative of a foreign company); 3. Copy of resolution of the Board authorizing the filing of the application and appointing the authorized representative, if any; 4. Affidavit; 5. Confirmation from the Chargeholder; 6. Balance Sheet and Annual Return of financial year in which form was filed for which rectification is done (if completed); 7. Optional attachment, (if any)
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	71(3), 77, 78 & 79 & Section 384 read with 71(3), 77, 78 and 79	3 of Chapter VI	YES	1. Copy of the resolution authorising the issue of the debenture series 2. *Instrument of creation or modification of charge 3. Order of the Central Government for rectification of change; 4. Optional attachment(s) –if any
MGT-3	Notice of situation or change of situation or discontinuation of situation, of place where foreign register shall be kept	88(4)	7(2) of Chapter VII	NO	—
MGT-6	Return to the	89(6)	9(3) of	NO	1. Declaration by person referred to

	Registrar in respect of declaration under section 89 received by the company		Chapter VII		in Section 89(1) 2. Declaration by person referred to in Section 89(2) or 89(3) 3. Optional attachment(s) – if any
MGT-7	Annual Return	sub-section (1) of section 92 of the Companies Act, 2013	sub-rule (1) of rule 11 of Chapter VII	YES	1. List of share holders, debenture holders 2. Approval letter for extension of AGM; 3. Copy of MGT,8; 4. Optional Attachment(s), if any.
MGT-10	Changes in shareholding position of promoters and top ten shareholders	93	13 of Chapter VII	YES	—
MGT-14	Filing of Resolutions and, agreements to the Registrar	94(1), 117(1) of Companies Act, 2013 and 192 of Companies Act, 1956	24 of Chapter VII	YES	1. Copy(s) of resolution(s) along with copy of explanatory statement under section 102 2. Altered memorandum of association 3. Altered articles of association 4. Copy of agreement (Mandatory in case agreement is selected at serial No.3). 5. Optional- if any
MGT-15	Form for filing Report on Annual General Meeting	121(1)	31(2) of Chapter VII	NO	—
AOC-5	Notice of address at which books of account are to be maintained	First proviso to 128(1)	2A of Chapter IX	NO	1. *Copy of board resolution 2. Optional attachment(s) – if any
ADT-1	Information to the Registrar by company for appointment of auditor	139(1)	4(2) of Chapter X	NO	1. *Copy of the intimation sent by company; 2. *Copy of written consent given by auditor; 3. *Copy of resolution passed by the company; 4. Optional attachment(s) – if any
ADT-2	Application for removal of auditor(s) from his/their office before expiry of term	140(1)	7(1) of Chapter X	NO	1. *Copy of the special resolution 2. *Details of the grounds for seeking removal of auditor 3. *Minutes of the annual general meeting or extraordinary general meeting

					4. Optional attachments, if any
ADT-3	Notice of resignation by the auditor	140(2)	8 of Chapter X	NO	1. * Resignation letter 2. Optional attachment(s) – if any.
DIR-3	Application for allotment of Director Identification Number	153	9(1) of The Companies (Appointment and Qualification of Directors) Rules, 2014 & Rule 10 of Limited Liability Partnership Rules, 2009]	YES	1. * Proof of identity of applicant 2. * Proof of residence of applicant 3. Optional attachment(s)- if any
DIR-3C	Intimate information of directors, managing director, manager and secretary by an Indian company	157	10A(2) of Chapter XI	YES	1. Optional attachment(s) – if any
DIR-5	Application for surrender of Director Identification Number	153	11(f) of Chapter XI	YES	(1) Proof of Identity: For Indian Nationals: (Any one of the following): <input type="radio"/> Income tax Permanent Account Number Card <input type="radio"/> Voter's identity card <input type="radio"/> Passport <input type="radio"/> Driving licence <input type="radio"/> Unique Identity Number (UIN) For Foreign Nationals and Non Resident Indians: <input type="radio"/> Passport <input type="radio"/> Others (2) Proof of residence: (tick against the document being enclosed) <input type="radio"/> Voter's identity card

					<input type="checkbox"/> Passport <input type="checkbox"/> Driving license <input type="checkbox"/> Electricity bill <input type="checkbox"/> Telephone bill <input type="checkbox"/> Bank account statement <input type="checkbox"/> Others – Please specify (3) Optional attachment(s), if any.
DIR-6	Intimation of change in particulars of Director to be given to the Central Government	–	12(1) of Chapter XI	Yes	1. *Proof of change in particulars 2. *Proof of Identity of director/ designated partner • Income-tax PAN (for Indian nationals) • Passport (for foreign nationals) 3. *Proof of residence of director/ designated partner- Address proofs like bank statements, electricity bill, telephone bill, utility bills etc. • If Indian, documents should not be older than 2 months from date of filing of eForm. • If foreign, address proof should not be older than 1 year from date of filing of eForm. 4. Optional attachment(s), if any.
DIR-10	FORM OF APPLICATION FOR REMOVAL OF DISQUALIFICATION OF DIRECTORS	164(2)	14(5) of Chapter XI	–	–
DIR-11	Notice of resignation of a director to the Registrar	168 (1)	16 of Chapter XI	NO	(1) * Notice of resignation filed with the company; (2) * Proof of dispatch; (3) Acknowledgement received from company, if any and is mandatory if yes selected in option at serial no 6. (4) Optional attachment(s) – if any
DIR-12	Particulars of appointment of Directors and the key	7(1)(c), 168 & 170 (2)	17 of the Companies (Incorpo-	YES	(1) Letter of Appointment; (2) Declaration by the first director (3) Declaration of the appointee Director, in Form DIR-2;

	managerial personnel and the changes among them		<i>ration) Rules, 2014 and 8, 15 & 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014</i>		(4) Notice of resignation; (5) Evidence of Cessation; (6) Interest in other entities; (7) Optional attachment(s), if any
MR-1	Return of appointment of managerial personnel	Section 196 read with Section 197 and Schedule V	3 of Chapter XIII	Yes	<ol style="list-style-type: none"> 1. *Copy of board resolution 2. *Copy of letter of consent to act as Managing Director/ Whole time Director/Manager /CEO/CFO/ Secretary; 3. Copy of certificate by the Nomination and Remuneration Committee of the company, if any, to the effect that the remuneration is as per remuneration policy of the company 4. Copy of Central Government approval if appointee is convicted or detained as per Schedule V 5. Optional attachment(s) – if any
MR-2	Form of application to the Central 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	196, 197, 200, 201(1), 203(1) and Schedule V	7 of Chapter XIII	YES	<ol style="list-style-type: none"> 1. Copy of the calculation sheet of effective capital as computed under Schedule V to the Companies Act, 2013 as per previous year's audited balance sheet; 2. *Copy(s) of the resolution of Board of directors; 3. Copy of the resolution of Nomination and Remuneration committee along with its composition and certificate by the said committee to the effect that the remuneration is as per remuneration policy of the company and designation; 4. Copy of resolution of shareholder(s) along with notice and explanatory statement; 5. *Certificate from the auditor or company secretary or company

				<p>secretary in practice with regard to the compliance of section 196 of the Act;</p> <p>6. Certificate of no-default in repayment of debts (including public deposit or debentures or interest payable thereon) for a continuous period of thirty days in the preceding financial year before the date on appointment of such managerial person, from director or company secretary of the company</p> <p>7. No objection certificate from the financial institution(s) or bank(s) to whom the company has defaulted;</p> <p>8. Copy of the order of BIFR or NCLT together with the copy of a scheme of revival or Rehabilitation</p> <p>9. Copy of draft agreement between the company and the proposed appointee;</p> <p>10. *Newspaper clipping in which notices pursuant to section clause (b) of sub-section (2) of section 201 have been published</p> <p>11. Copy of employment visa/ passport, in case the proposed appointee is a foreign citizen;</p> <p>12. Copies of educational or professional qualification certificate;</p> <p>13. Statement as per item (iv) of third proviso of section II of Part II of Schedule V to the Companies Act, 2013.</p> <p>14. Projections of the Turnover and net profits for next three years;</p> <p>15. Calculation of estimated profit under section 198 of the Act;</p> <p>16. Auditors Certificate pursuant to Section 164(2) of the Companies Act, 2013;</p> <p>17. An application under Section 460 of the Act for condonation of delay;</p>
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					<p>18. *Full and proper justification in favour of the proposal along with bio-data of the appointee;</p> <p>19. Documentary proof regarding compliance of the provisions of Section 196 of the Companies Act, 2013 at the time of appointment/ re-appointment of the proposed appointee.</p> <p>20. Certificate by the secretary of the company or CA/CS in whole time practice to be notified erstwhile;</p> <p>21. Details, if applicant company is a subsidiary of listed company;</p> <p>22. Certificate from CA/CS in whole time practice along with calculation of excess remuneration paid to the appointee;</p> <p>23. Optional attachment, if any</p>
GNL-1	Form for filing an application with Registrar of Companies	—	12(2) of Chapter 24	YES	<p>Attachments 1. Board resolution</p> <p>2. Scheme of arrangement, amalgamation</p> <p>3. *Detailed application</p> <p>4. Copy of notice received from RoC or any other competent authority</p> <p>5. Optional attachment(s) – if any</p>
GNL-2	Form for submission of documents with the Registrar		12(2) of Chapter 24	NO	<p>1. Copy of prospectus or information memorandum or private placement offer letter or record of private to be kept by the company</p> <p>2. Form 149 or form 152 or form 153 or form 154 or form 156 or form 157 or form 158 or form 159 of the Companies (Court) Rules, 1959</p> <p>3. Form SH-9 : Declaration of Solvency</p> <p>4. Return of deposits or circular for inviting deposits or circular in the form of advertisement for inviting deposits</p> <p>5. Optional attachment(s) – if any</p>
GNL-3	Particulars of person(s) or Key		sub-rule (3) of rule 12	YES	<p>1. *Copy of the board resolution</p> <p>2. Optional attachment(s) - if any</p>

	managerial personnel charged or specified for the purpose of sub-clause (iii) or (iv) of clause 60 of Section 2		of the Companies (Registration offices and Fees) Rules, 2014		
GNL-4	Form for filing addendum for rectification of defects or incompleteness		10 of the Companies (Registration Offices and Fee) Rules, 2014	YES	–
CRA-2	Form of intimation of appointment of cost auditor by the company to Central Government	148(3)	6(2) & 6(3A)	NO	(1)* Copy of Board resolution of the company (2) Optional attachment, if any.
CG-1	Form for filing application or documents to Central Government			NO	1. Optional attachment(s) - if any
ADJ	Memorandum of Appeal	454(5)	4(1)	NO	1. Certified copy of the order against which appeal is sought ; 2. A copy of authorization in favor of authorized representative and also written consent of such authorized person is also required to be attached where party is represented by such authorized person. 3. Order of condonation of delay is mandatory in case there is any delay in filing the order 4. Optional attachment(s), if any
RD-1	Form for filing application to Central Government (Regional Director) (A	–	–	NO	1. Memorandum of association (MoA) 2. Articles of association (AoA) 3. Declaration as per Rules 4. Form INC-12 5. Assets and liabilities statement as

	company can seek approval from Regional Director by filing application in eForm RD-1 for certain mentioned purposes under Companies Act, 2013.)				<p>per applicable rules</p> <p>6. If association is already in existence, then last two years' accounts, balance sheet and report on working of the association as submitted to the members of the association</p> <p>7. Statement of brief description of the work, if already done by the association and the work proposed to be done</p> <p>8. Statement of the grounds on which application is made</p> <p>9. Copy of ordinary resolution</p> <p>10. Copy of board resolution</p> <p>11. Optional attachment(s) - if any</p>
MSC-1	Application to ROC for obtaining the status of dormant company	sub-section (1) of section 455	3	YES	<p>1. *Copy of board resolution authorizing making</p> <p>2. *Copy of special resolution;</p> <p>3. *Auditor's certificate; of this application;</p> <p>4. *Statement of affairs duly certified Chartered Accountant or Auditor(s) of the company;</p> <p>5. Copy of approval or no objection certificate (NOC) from the regulatory authority in case company is regulated by such authority</p> <p>6. Consent of the lender if any loan is subsisting;</p> <p>7. Latest financial statement and annual return of the company is mandatory to attach in case the same is filed to Registrar</p> <p>8. Certificate regarding no dispute in the management or ownership;</p> <p>9. Optional attachment(s), if any.</p>
MSC- 3	Return of dormant companies	455(5)	7 and 8 of Chapter 29	YES	<p>1. * Copy of Board resolution showing authorization given for filing this declaration;</p> <p>2. Duly audited statement of financial position;</p>

					3. Optional attachment(s)), if any.
MSC-4	Application for seeking status of active company	455(5)	8 of Chapter 29	Yes	1. *Copy of Board resolution authorizing the filing of this application; 2. Optional attachment(s),- IF ANY
STK-2	Application by company to ROC for removing its name from register of companies	248(2)	4(1) of Chapter XVIII	YES	1. *A statement of accounts showing assets and liabilities of Company made up to a day, not more than thirty days before date of application and certified by Chartered Accountant 2. *Board Resolution authorising filing of this application. 3. *Special Resolution passed or copies of consent obtained under sub-section (2) of section 248. 4. *Indemnity bonds in Form STK-3 5. *Affidavit in Form STK-4 6. Copy of order of concerned regulatory authority, if any, approving the filing of this application. 7. Copy of relevant order for delisting, if any, from the Stock Exchange 8. Other attachments as per applicable Rule 9. Optional attachments(s), if any
FC-1	Information to be filed by foreign company	380(1)(h)	3(3) of Companies (Registration of Foreign Companies) Rules, 2014]	NO	1* Certified copy of the charter, statutes, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company; 2. *List of directors and secretary of the foreign company; authorized representative(s); 3. * Power of attorney or board resolution in favor of the 4. *Reserve bank of India approval letter 5. Copy of permission letter of other Authority(s)/Regulator(s), if any <i>It is mandatory to attach following in case number entered is more than seven of respective field:</i> 6. Particulars of the persons covered

					<p>under section 379</p> <p>7. Details of the places of business other than principal place of business in India</p> <p>8. Details of the places of business established at any earlier occasion(s)</p> <p>9. Particulars of the authorized representatives</p> <p>10. Interest of authorized person(s) in other entities</p> <p>11. Particulars of subsidiary, holding or associate companies of the foreign company in India</p> <p>12. Particulars of related party of the foreign company</p> <p>13. Optional attachment(s), if any List</p>
FC-2	Return of alteration in the documents filed for registration by foreign company	380(3)	3(4)	NO	<p>1. Copy of the Board resolution, if any;</p> <p>2. Copy of the general meeting resolution, if any;</p> <p>3. Copy of approval letter, if any;</p> <p>4. Translated version of the documents (in case it is not in English)</p> <p>5. Particulars of alterations in the place of business in India of the company</p> <p>6. Particulars of alteration in details of the directors or secretaries</p> <p>7. Particulars of alterations in details of the company authorized representative</p> <p>8. Optional attachments, if any.</p>
FC-3	Annual accounts along with the list of all principal places of business in India established by foreign company	381	6	NO	<p>1. * Copy of balance sheet and profit and loss account duly authenticated under section 381(1);</p> <p>2. *Copy of latest consolidated financial statement of parent company</p> <p>3. Statement of related party transactions as per rule 4(2)(a);</p> <p>4. Statement of repatriation of profits as per rule 4(2)(b);</p> <p>5. Statement of transfer of funds as</p>

					<p>per rule 4(2)(c);</p> <p>6. Approval letter obtained for every establishment;</p> <p>7. Optional attachment(s) , if any</p>
FC-4	Annual return of a foreign company	384(2)	7 of Chapter 22	NO	<p>1. Details of Promoters , Directors and Key managerial and changes therein since close of previous financial year</p> <p>2* Details of directors and key managerial personnel and their remuneration;</p> <p>3 * Details of the meeting of the members or class thereof, board and its various committees along with attendance details;</p> <p>4. Particulars of members and debenture holders along with changes therein since the close of previous financial year;</p> <p>5. Particulars of Holding, subsidiary and associate companies and firms;</p> <p>6. Details of penalties/punishment/ Compounding of offences, if any;</p> <p>7. Optional attachment(s), (if any).</p>
URC-1	Application by a company for registration under section 366 (conversion from firm into company and LLP into company)	366	3 of Chapter XXI	YES	<p>1. * Particulars of members/partners along with the details of shares held by them;</p> <p>2. *Declaration of two or more directors verifying the particulars of all members/partners;</p> <p>3. *Affidavit from all the members/ partners for dissolution of the entity;</p> <p>4. *Copy of the instrument constituting or regulating the entity;</p> <p>5. *Copy of certificate of registration of the entity;</p> <p>6. *Copy of Newspaper advertisement;</p> <p>7. *Certificate from a CA/CS/CWA certifying the compliance with all the provisions of Stamp Act, to the extent applicable;</p> <p>8. Consent of majority of members;</p>

					<p>9. Consent of at least three-fourth of members agreeing for registration under this part;</p> <p>10. No objection certificate from the concerned Registrar of Firms or Registrar of Companies (LLP);</p> <p>11. No objection certificate/Consent given by secured creditors;</p> <p>12. Statement of accounts of the company, prepared not later than 6 days preceding the date of application duly certified by auditor; if applicable</p> <p>13. Copy of the resolution declaring the amount of guarantee</p> <p>14. Optional attachment(s) (if any)</p>
I-XBRL	Form for filing XBRL document in respect of cost audit report and other documents with the Central Government	section 233B(4), 600(3)(b) of the Companies Act, 1956 and	Companies (Cost Audit Report) Rules, 2011	NO	<p>1. *XBRL document in respect of the cost audit report</p> <p>2. Optional attachment(s) - if any List of</p>
A-XBRL	Form for filing XBRL document in respect of compliance report and other documents with the Central Government	section 209(1)(d), 600(3)(b) of the Companies Act, 1956 and	relevant Cost Accounting Records Rules, 2011	NO	<p>1. *XBRL document in respect of compliance report</p> <p>2. Optional attachment(s) - if any</p>
AOC-4 XBRL	Form for filing XBRL document in respect of financial statement and other documents with the Registrar	137	12(2) of Chapter IX	YES	<p>1. *XBRL financial statements duly authenticated as per section 134 (including Board's report, auditor's report and other documents)</p> <p>2. XBRL document in respect of Consolidated financial statement.</p> <p>3. Statement of subsidiaries as per section 129-Form AOC-1 (for foreign subsidiaries)</p> <p>4. Statement of fact and reasons for not adopting balance sheet in annual general meeting.</p> <p>5. Statement of fact and reasons for not holding AGM</p>

					<p>6. Approval letter of extension of financial year or AGM</p> <p>7. Supplementary or test audit report under section 143</p> <p>8. Details of comments of CAG of India</p> <p>9. Optional attachments(s), if any</p>
Investor complaint form	Form for filing	–	–	NO	<p>1. Identity proof of complaint</p> <p>2. Optional attachment(s) – if any</p>
FORM NO. 23AC-XBRL	Form for filing XBRL document in respect of balance sheet and other documents with the Registrar	220 of the Companies Act, 1956	Companies (Filing of documents and forms in eXtensible Business Reporting Language) Rules, 2011	YES	<p>1.* XBRL document in respect of balance sheet, schedules, notes thereto, director's report and auditor's report</p> <p>2. XBRL document in respect of consolidated balance sheet, schedules, notes thereto, director's report and auditor's report</p> <p>3. Statement of subsidiaries as per section 212 (To be attached in respect of foreign subsidiaries)</p> <p>4. Statement of the fact and reasons for not adopting balance sheet in the annual general meeting (AGM)</p> <p>5. Statement of the fact and reasons for not holding the AGM</p> <p>6. Approval letter for extension of financial year or AGM</p> <p>7. Supplementary or test audit report under section 619(3)(b)</p> <p>8. Corporate governance report, Management discussion and analysis and any other document</p> <p>9. Optional attachment(s) - if any</p>
FORM NO. 23ACA-XBRL	Form for filing XBRL document in respect of Profit and Loss account and other documents with the Registrar	220 of the Companies Act, 1956	Companies (Filing of documents and forms in eXtensible Business Reporting Language) Rules, 2011	YES	<p>1.* XBRL document in respect of profit and loss account, schedules and notes thereto</p> <p>2. XBRL document in respect of consolidated profit and loss account, schedules and notes thereto</p> <p>3. Statement of subsidiaries as per section 212 (To be attached in respect of foreign subsidiaries)</p> <p>4. Optional attachment(s) - if any</p>

FORM 14	Form for intimating the Registrar of Firms/ Registrar of Companies of conversion of the firm/ company into limited liability partnership		33	NO	1. Copy of the certificate of incorporation of Limited Liability Partnership 2. Optional attachment
REFUND FORM	Application for requesting refund of fees paid	—	—	NO	1. Copy of challan duly acknowledged by bank in respect of SRN for which refund is sought 2. Copy of challan duly acknowledged by bank in respect of other SRN, if applicable 3. *Scanned copy of cancelled cheque 4. Optional attachment(s) – if any
Form NDH-1	Return of Statutory Compliances		sub rule (2) of rule 5 of Nidhi Rules, 2014	YES	—
Form NDH-2	Application for extension of Time		sub-rule (3) of rule 5 of Nidhi Rules, 2014	YES	1. Board resolution 2. Detailed application 3. Audited financial statements (last available) 4. Reasons and justification for the application
FORM NDH-3	HALF YEARLY RETURN		rule 21 of Nidhi Rules, 2014)	YES	—
IEPF-1	Statement of amounts credited to Investor Education and Protection Fund		Rule 5(4) of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016]	No	1. Optional Attachments
IEPF-2	Statement of unclaimed and unpaid amounts		Rule 5(8)	No	N.A.

IEPF-3	Statement of shares and unclaimed or unpaid dividend not transferred to the Investor Education and Protection Fund	124(6)	Rule 6(3)	No	1.*Order of the Court/Tribunal/ Statutory Authority. 2. Optional Attachments, if any.
IEPF-4	Statement of shares transferred to the Investor Education and Protection Fund			No	
IEPF-5	Application to the Authority for claiming unpaid amounts and shares out of Investor Education and Protection Fund (IEPF)	125(3)	Rule 6(13) & 8(1)	No	N.A.
IEPF-6	Statement of unclaimed or unpaid amounts to be transferred to the Investor Education and Protection Fund		Rule 8	No	1. Optional Attachment

Penalty for Filing False Documents/Statements with the Registrar

According to Section 448 of the Companies Act 2013, 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,—

- (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.

Further Section 447, 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 involving an amount of at least ten lakh rupees or one percent. 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 twenty lakh rupees or with both."

MODE OF PAYMENT OF FEES

MCA-21 system provides for the facility of payment of statutory fees through multiple modes i.e.

- (i) Off-line payment through a challan generated by the system and payment of fees at the counter of the notified bank branches through DDs/ Cash;
- (ii) On-line payments through Internet Banking, Credit Cards [Master Card/ VISA], Debit Card and NEFT.

Off-line method of payment of fees

In case a stakeholder chooses to pay through the off-line method (i.e. over the counter in a authorised bank branch through the pre-filled challan generated by the system after e-filing), it normally takes about two to three days for the bank to intimate the realisation of payment to the MCA-21 system and the transaction gets passed on to the back office for processing only after payment is recognised by the banking system. On the other hand, the on-line payment through Internet banking/Credit Card is instant.

Online method of payment of fees

Electronic payments through Internet can be made either by credit card or by Internet banking facility.

Credit Card Payment Process

The credit card payment process is as follows:

- (a) The user selects credit card option for payment;
- (b) MCA-21 system provides SRN and amount to third party (payment gateway);
- (c) User is re-directed to third party providing internet payment gateway services. The user enters card information (card number, expiry date, etc.) as requested by the payment gateway server to process the payment;
- (d) On success, following payment authorization information is provided by the payment gateway -SRN, date and time of transaction, amount paid, Authorization/Reference ID (generated by payment gateway), Credit Authorization reference (VISA, MASTERCARD, etc.);
- (e) The payment status is updated as "Paid" for the corresponding SRN;
- (f) In case of failure in payment (due to incorrect card number, card expiration, etc.), user is displayed the error page with appropriate error message (if received from payment gateway) along with payment options to restart the payment process.

Internet Banking Payment Process

Payments shall be made through Internet banking facility provided by designated banks namely, HDFC Bank, ICICI Bank, Indian Bank, Punjab National Bank, Union Bank of India and State Bank of India. The Internet banking payment process is as follows:

- (1) MCA-21 system redirects the user to the bank's Internet banking portal URL (as provided by the banking portal beforehand) and passes the necessary information such as SRN and amount;
- (2) User interacts with the bank portal and provides relevant information for payment processing;
- (3) After the payment processing is done, the response is sent by the bank's Internet banking portal to MCA portal;
- (4) On success, following payment authorization information is provided by bank portal:
 - (i) SRN;
 - (ii) Date & time of transaction;
 - (iii) Amount paid;

- (iv) Authorization/Reference ID generated by bank's portal;
 - (v) Credit Authorization reference (VISA, MASTERCARD, etc.)
- (5) SRN, date and time of transaction, Amount paid and Authorization/ Reference ID (generated by bank's portal) MCA portal. Payment authorization information as received is Updated in the database and the payment status is updated as "Paid" for the corresponding SRN Internet banking service is not provided by some of the banks 24 hours, and 7 days in a week. In case the user opts for Internet banking option for payment, when the service is not online, request for payment will be accepted by the bank portal to be processed offline.

CONDONATION OF DELAY

According to Section 460, Notwithstanding anything contained in this Act, –

- (a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and
- (b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

The Company Secretary should follow the procedure as laid below:

- (1) Convene a Board Meeting and pass a resolution for seeking condonation of delay in filing the document.
- (2) Submit an application to the Central Government, in pdf format, to this effect indicating alongwith the reasons for such delay. The application should be accompanied by a copy of the Board Resolution seeking condonation of delay, latest audited balance sheet and profit and loss account, certified copy of the memorandum and articles of association and filing fees.
- (3) The Central Government may for reasons to be recorded in writing, condone the delay.

LESSON ROUND UP

- With the advent of Information and Communication Technology in all sectors today, Governments across the globe including the Government of India are taking major initiatives to integrate IT in all their processes. Electronic Governance is the application of Information Technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. E-governance is a highly complex process requiring provision of hardware, software, networking and re-engineering of the procedures for better delivery of services.
- Filing and filing of forms is an important part of the secretarial function of a company secretary. Normally, where company appoints a company secretary, he is designated as the officer responsible for compliance under the Companies Act and other allied legislations. Therefore, for any lapse in complying with the various provisions of the Companies Act or such other legislations, for the compliance of which the company secretary has been made responsible, he becomes liable as "officer in default".
- Professionals are responsible for submitting/certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry. If a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under section 447 and 448 of the Companies Act, 2013 besides disciplinary action by the Institute which issued the Certificate of Practice.
- An applicant seeking reservation of name for a proposed company or an existing company seeking to

change its name shall make an application to Registrar in which the registered office of the company is situated or to be situated. User may apply for reservation of name by filing eForm INC-1. In case of new company, the applicant can propose six names for the company.

- An existing company registered under section 8 seeks to convert itself into a company of any other kind shall make an application to the Regional Director for conversion of its status. Once the approval is given by the Regional Director, the company shall cease to enjoy all the privileges/ concessions obtained by it on account of being a Section 8 company.
- In order to shift the registered office of the company from one state to another or from jurisdiction of one Registrar of Companies to another, an application in eForm INC-23 has to be made to the Regional Director (Central Government) for his confirmation/ approval.
- Whenever an existing company needs to change its status from private to public or vice versa, it shall be required to file this eForm. For the purpose of conversion from private company to public company, a private company is required to pass special resolution and file an intimation of its conversion in eForm INC-27. A Public company can also get itself converted into a private company by filing eForm INC-27 subject to passing of the special resolution and approval of the Tribunal.
- Whenever a company makes any allotment of shares or securities, it is required to file a return of allotment in eForm PAS-3 to Registrar within thirty days of such allotment including the complete list of allottees to whom the securities have been issued.
- In case the appointment of an key managerial personnel is made within the specified parameters (in accordance of schedule V of the Companies Act, 2013) then a return has to be filed in eForm MR-1 with RoC within 60 days from the date of such appointment.
- Any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force consisting of seven or more members, may at any time register itself under Companies Act, 2013 as a Part I Company. For this purpose, eForm URC-1 shall be filed along with eForm INC-7.
- A foreign company file the particulars of the principal place of business in eform FC-1 within 30 days of establishment of place of business in India alongwith the required documents to RoC, Delhi. The Registrar of the corresponding state shall have access to these documents filed with the RoC, Delhi.
- A company is formed and registered for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years may make an application in eForm MSC-1 to the Registrar of Companies for obtaining the status of a dormant company.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not be submitted for evaluation)

1. Discuss E-Governance and MCA-21.
2. State the check points with reference to Form-7.
3. What are the modes of payment under filing of forms under Companies Act, 2013?

Lesson 17

Striking Off Names of Companies

LESSON OUTLINE

- Introduction
- Section 248 of Companies Act, 2013
- Companies that cannot be removed Register of Companies
- Procedure of Removal of Name of Company from Register of Companies by Registrar
- Manner of publication of notice
- Notice of striking off and dissolution of company
- Applications or forms pending before Central Government
- Dormant company
- Procedure for obtaining status of Dormant company
- Procedure for obtaining status of active company
- ANNEXURES
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The provisions relating to striking off names from the Register under Companies Act, 2013 i.e. section 248 prescribes the law and procedure for striking off the names of defunct companies which are not carrying on any business, from the register of companies maintained by the Registrar. This is an alternative to winding up of a company subject to statutory criterion specified under the section.

Provisions relating to Dormant Company under section 455 have already been notified under Companies Act 2013 and the procedural aspects have been dealt in this chapter.

After reading this chapter you will be able to understand the procedural aspects relating to striking off names of companies, and the procedure to obtain the status of dormant company and the status of active company.

A. REMOVAL OF NAME FROM REGISTER OF COMPANIES FROM REGISTRAR

INTRODUCTION

Section 248 of Companies Act, 2013 deals with Power of Registrar to remove name of company from register of companies.

Removal of name from register of companies may be :

- (1) By Registrar
- (2) By the Company own its own

Removal of name from Register of Companies by Registrar

Section 248 provides that in case the Registrar has reasonable cause to believe that –

- (a) a company has failed to commence its business within one year of its incorporation; or
- (b) a company is not carrying on any business or operation for a period of two immediately preceding financial years **and** has not made any application within such period for obtaining the status of a dormant company under section 455

the Registrar shall start the process of removing the name.

The Registrar shall :

- send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies;
- request them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

Therefore, to be eligible for removal of name from register of Companies by the Registrar, a company is required to have following two features :

- (a) a company has failed to commence its business within one year of its incorporation; or
- (b) a company is not carrying on any business or operation for a period of two immediately preceding financial years **and** has not made any application within such period for obtaining the status of a dormant company under section 455,

Removal of name from Register of companies by the company on its own:

As per provision of Section 248(2) , a company may apply for removal of name from register of company to registrar subject to the following conditions:

1. company needs to extinguish all its liabilities
2. by passing a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital,

Once the conditions are fulfilled, the company is required to file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies

The Company may file the application, on the following grounds:-

- (a) a company has failed to commence its business within one year of its incorporation; or
- (b) a company is not carrying on any business or operation for a period of two immediately preceding financial years **and** has not made any application within such period for obtaining the status of a dormant company under section 455,

On receipt of such application, the Registrar shall cause a public notice to be issued in the prescribed manner.

A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public. At the expiry of the time mentioned in the notice, the Registrar may strike off its name from the register of companies.

Before passing an order the Registrar shall satisfy himself that sufficient provision has been made for the realisation of all amounts due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time. He may obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company.

Registrar shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved, shall continue and may be enforced as if the company had not been dissolved.

It should be noted that the power of the Tribunal, to wind up a company whose name has been struck off from the register of companies, shall not be affected by Section 248.

Companies that cannot be removed from the Register of Companies

Following categories of companies shall not be removed from the register of companies under Rule 3 & 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

- a) listed companies;
- b) companies delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;
- c) vanishing companies;
- d) companies where inspection or investigation is ordered and being carried out or actions still pending or were completed but prosecutions are still pending in the Court;
- e) companies where notices under section 234 of the Companies Act, 1956 or section 206 or section 207 of the Act been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 has not been submitted or follow up of instructions on report is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the Court;
- f) companies against which any prosecution for an offence is pending in any court;
- g) companies whose application for compounding is pending before the competent authority for offences committed by the company or any of its officers in default;
- h) companies which have accepted public deposits which are either outstanding or default in repayment;
- i) companies having charges which are pending for satisfaction; and
- j) companies registered under section 25 of the Companies Act, 1956 or section 8 of the Act.

Procedure of Removal of Name of a Company from Register of Companies by Registrar on suo moto basis (Rule 3)

1. The Registrar of Companies may remove the name of a company from the register of companies in terms of sub-section (1) of section 248 of the Act.
2. The Registrar shall give a notice in writing in **Form STK 1** which shall be sent to all the directors of the

company at the addresses available on record, by registered post with acknowledgement due or by speed post.

3. The notice shall contain the reasons on which the name of the company is to be removed from the register of companies and shall seek representations, if any, against the proposed action from the company and its Directors along with the copies of relevant documents, if any, within a period of thirty days from the date of the notice.

Procedure of Removal of Name of a Company from Register of Companies by Registrar on application made by the company (Rule 4, 5, 6)

1. An application for removal of name of the company under sub-section (2) of section 248 shall be made in **Form STK-2** along with the fee of five thousand rupees.
2. It shall be signed by a director duly authorised by the Board in their behalf.
3. Where the director concerned does not have a registered digital signature certificate, a physical copy of the form duly filled in shall be signed manually by the director duly authorised in that behalf and shall be attached with the Form STK 2 while uploading the form.
4. It shall be certified by a Chartered Accountant or Company Secretary or Cost Accountant, in whole time practice, as the case may be.
5. Every application shall accompany a no objection certificate from appropriate Regulatory Authority concerned in respect of following companies:-
 - a) companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 (2 of 1934) or rules and regulations thereunder;
 - b) housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987 (53 of 1987);
 - c) insurance companies as referred to in the Insurance Act, 1938 (4 of 1938) or rules and regulations thereunder;
 - d) companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;
 - e) companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;
 - f) asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;
 - g) any other company which is regulated under any other law for the time being in force.
6. The application in Form STK 2 shall be accompanied by –
 - a) indemnity bond duly notarised by every director in **Form STK 3**.
 - b) a statement of accounts containing assets and liabilities of the company made up to a day, not more than thirty days before the date of application and certified by a Chartered Accountant.
 - c) An affidavit in **Form STK 4** by every director of the company.
 - d) a copy of the special resolution duly certified by each of the directors of the company or consent of seventy five per cent of the members of the company in terms of paid up share capital as on the date of application,
 - e) a statement regarding pending litigations, if any, involving the company.

It should be noted that if the person is a foreign national or non-resident Indian, the indemnity bond, and declaration shall be notarised or apostilised or consularised. (Rule 8)

Manner of publication of notice (Rule 7)

1. The notice under sub-section (1) or sub-section (2) of section 248 shall be in **Form STK 5 or Form STK 6**, as the case may be, and be-
 - i. placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;
 - ii. published in the Official Gazette;
 - iii. published in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, having wide circulation in the State in which the registered office of the company is situated.
2. In case, if any application is made under sub-section (2) of section 248 of the Act, the company shall also place the application on its website, if any, till the disposal of the application.
3. The publication of notice under point (iii), in respect of cases falling under subsection (1) of section 248 shall be in **Form No. STK 5A**.
4. The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the company, viz, the Income Tax authorities, Central Excise authorities and Service Tax authorities having jurisdiction over the company, about the proposed action of removal or striking off the names of such companies and seek objections, if any, to be furnished within a period of thirty days from the date of issue of the letter of intimation and if no objections are received within thirty days from the respective authority, it shall be presumed that they have no objections to the proposed action of striking off or removal of name.

Notice of striking off and dissolution of company (Rule 9)

The Registrar shall cause a notice under subsection (5) of section 248 of striking off the name of the company from the register of companies and its dissolution to be published in the Official Gazette in **Form STK 7** and the same shall also be placed on the official website of the Ministry of Corporate Affairs.

Applications or forms pending before Central Government (Rule 10)

Any application or pending proceeding for striking off or Form-FTE filed with the Registrar of Companies prior to the commencement of these rules but not disposed of by such authority for want of any information or document shall, on its submission, to the satisfaction of the authority, be disposed of in accordance with the rules made under the Companies Act, 1956 (1 of 1956).

B. DORMANT COMPANY

DORMANT COMPANY UNDER SECTION 455 OF COMPANIES ACT 2013

Section 455 of the Companies Act, 2013 has been notified w.e.f. April 01, 2014.

According to section 455 of Companies Act, 2013 Dormant Company is an inactive company which has not been carrying any business or has not made any significant accounting transaction in the last two financial years.

- (i) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

- (ii) "significant accounting transaction" means any transaction other than—
- (a) payment of fees by a company to the Registrar;
 - (b) payments made by it to fulfil the requirements of this Act or any other law;
 - (c) allotment of shares to fulfil the requirements of this Act; and
 - (d) payments for maintenance of its office and records

Such company may make an application to the Registrar in **MSC-1** obtaining the status of a dormant company. Concurrently, the Registrar may also suo motu direct such a company for the status of a dormant company. The Registrar on consideration of the application allow the status of a dormant company to the applicant and issue a certificate in **Form MSC-2** to that effect. The Registrar shall maintain a register of Dormant Companies under the portal maintained by the Ministry of Corporate Affairs.

A company, once identified as dormant, will need to maintain only a minimum number of Directors and pay some annual fees as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.

Such companies could be restarted at a later stage, without actually going through the administrative process of closing down the existing company by making an application. The dormant companies can become active by, making an application.

If the Dormant Company fails to comply with the requirements of the Section 455 of the Companies Act, 2013 the Registrar shall have the power to strike off its name.

CONDITIONS FOR OBTAINING STATUS OF DORMANT COMPANY

A company shall be eligible to apply for status of dormant company only, if-

- (i) No inspection, inquiry or investigation has been ordered or taken up or carried out against the company.
- (ii) No prosecution has been initiated and pending against the company under any law.
- (iii) The company is neither having any public deposits which are outstanding nor is the company in default in payment thereof or interest thereon.
- (iv) The company is not having any outstanding loan, whether secured or unsecured. if there is any outstanding unsecured loan, the company may apply after obtaining concurrence of the lender and enclosing the same with Form **MSC-1**.
- (v) There is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form **MSC-1**.
- (vi) The company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.
- (vii) The company has not defaulted in the payment of workmen's dues.
- (viii) The securities of the company are not listed on any stock exchange within or outside India.

PROCEDURE FOR OBTAINING STATUS OF DORMANT COMPANY

1. A company may make an application in **Form MSC-1** along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).
2. The Registrar shall, after considering the application filed in **Form MSC-1**, issue a certificate in **Form MSC-2** allowing the status of a Dormant Company to the applicant.

3. The Register maintained under the portal maintained by the Ministry of Corporate Affairs on its *web-site* www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.
4. A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company. The provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.
5. A dormant company shall file a "Return of Dormant Company" annually, *inter-alia*, indicating financial position duly audited by a chartered accountant in practice in **Form MSC- 3** along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of 30 days from the end of each financial year:
6. The company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.
7. An application, for obtaining the status of an active company shall be made in **Form MSC-4** along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in **Form MSC-3** in respect of the financial year in which the application for obtaining the status of an active company is being filed.
8. The Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.
9. The Registrar shall, after considering the application filed issue a certificate in **Form MSC-5** allowing the status of an active company to the applicant.
10. When a dormant company does or omits to do any act mentioned in the Grounds of application in **Form MSC-1** submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within 7 days from such event, file an application, for obtaining the status of an active company.
11. Where the Registrar has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

APPLICATION SEEKING STATUS OF AN ACTIVE COMPANY

- (1) An application, under section 455, for obtaining the status of an active company shall be made in **Form MSC-4** along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in **Form MSC-3** in respect of the financial year in which the application for obtaining the status of an active company is being filed.
- (2) The Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.
- (3) The Registrar shall, after considering the application filed, issue a certificate in **Form MSC-5** allowing the status of an active company to the applicant
- (4) When a dormant company does or omits to do any act mentioned in the Grounds of application in **Form MSC-1** submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant

company, the directors shall within seven days from such event, file an application, for obtaining the status of an active company.

- (5) When the Registrar has reasonable cause to believe that any company registered as 'Dormant Company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

ANNEXURE

Annexure I

Board Resolution for Getting the Name of the Company Removed from Register of Companies

“RESOLVED THAT pursuant to provisions of sub section (1) and (2) of section 248 of Companies Act, 2013 and rules pertaining to the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, the company, _____ Limited, is not carrying on any business since its incorporation / is not in operation for a period of more than two preceding financial years / has not made an application to obtain the status of a dormant company under section 455 and since it does not intend to carry on any business in future, it is hereby approved that an application be made to the Registrar of Companies, _____, for removal of its name from the Register of Companies subject to approval of shareholders in annual general meeting by way of a special resolution or the consent of seventy-five per cent of members, in terms of paid-up share capital, is required.”

“RESOLVED FURTHER THAT Mr./Ms....., Director and Mr./Mrs....., Director be and are hereby jointly and severally authorized to make an application to the Registrar of Companies, _____ and to do all the acts, deeds, things and file forms that are necessary or incidental, for removal of name of company from the Register of Companies under section 248 of the Companies Act 2013 and the guidelines issued by the Ministry of Corporate Affairs in this regard.”

Annexure II

FORM No. STK-3

Indemnity Bond

(To be drawn on Stamp Paper of appropriate value)

(to be given individually or collectively by every director)

{Pursuant to clause (i) of sub-rule (3) of rule 4 of the Companies (Removal of Names of Companies from the Registrar of Companies) Rules, 2016}

To,

The Registrar of Companies,

1. I/We, the Director(s) of.....(mention the name of the Company), incorporated on.....under the Companies Act, 2013 or Companies Act, 1956, having its registered office atdo hereby declare that:
 - (i) I/ We....., S/o/D/o/W/o Shri....., am/are Director(s) of this Company.
 - (ii) That I/We have made an affidavit confirming that the Company does have any assets and liabilities as on date.

(iii) Further, the Company has been inoperative from the date of its incorporation/ The Company commenced business/operations/commercial activity after incorporation but has been inoperative for the past year(s) (strike out whichever is not applicable). Thus, the Company is defunct and I request the Registrar of Companies..... to strike off the name of the Company from the Register of Companies under Section 248 of the Companies Act, 2013.

2. I/We do hereby undertake to indemnify:-

- (i) the claimants for all lawful claims against the company arising in future after the striking off the name of the Company.
- (ii) any person for any losses that may arise pursuant to striking off the name of the Company.
- (iii) the claimants for all lawful claims and liabilities which have not come to our notice up to this stage, and if any claim arises or observed even after the name of the Company has been struck off in terms of Section 248 of the Companies Act, 2013.

Place:

Date:

(Name, Father's name, Address and Signature)

(To be given by every Director)

WITNESSES :

1. Signature

Name:

Father's name:

Address:

Occupation:

2. Signature

Name:

Father's name:

Address:

Occupation:

ANNEXURE III

FORM No. STK - 4

AFFIDAVIT

(to be given individually by every Director)

[Pursuant to sub section (2) of section 248 read with clause (iii) of sub-rule (3) of Rule 4]

1. I/ We Director of..... (hereinafter called "the Company"), incorporated on under the Companies Act, 2013 or the Companies Act, 1956 having its registered office at..... and having CIN do solemnly affirm and state as under:

- (i) I/ We S/o / D/o Shri/Smt..... Holder of DIN/Income Tax PAN/Passport number (copy of Income Tax PAN/Passport duly attested by a Gazetted Officer or a whole time practicing professional viz Chartered Accountant/Company Secretary/Cost Accountant) am Director of the Company stated above since..... (mention date of appointment).
- (ii) My present residential address is..... (copy of documentary evidence duly attested by a Gazetted Officer or a whole time practicing professional viz Chartered Accountant/Company Secretary/Cost Accountant) is enclosed (Alternatively, an affidavit sworn before Magistrate may be enclosed).
- (iii) My permanent address is..... (copy of documentary evidence duly attested by a Gazetted Officer or a whole time practicing professional viz Chartered Accountant/Company Secretary/Cost Accountant) is enclosed (Alternatively, an affidavit sworn before Magistrate may be enclosed).
- (iv) The Company does not maintain any bank account as on date.
- (v) The Company (mention name of the Company) does not have any assets and liabilities as on date.
- (vi) The Company has been inoperative from the date of its incorporation/The Company commenced business/operations/commercial activity after incorporation but has been inoperative for the past.....year(s) due to following reasons..... (give the reasons here).
- (vii) As on date, the Company does not have any dues towards Income Tax/Sales Tax/Central Excise/ Banks and Financial Institutions; and other Central or State Government Departments/Authorities or any Local Authorities.

2. I further affirm that –

- (i) No inquiry, technical scrutiny, inspection or investigation is ordered or pending against the company;
- (ii) No prosecution or any compounding application for any offence under the Act or under any of the other Acts is pending against the company or against the undersigned;
- (iii) The company is neither listed nor delisted for non-compliance of listing agreement;
- (iv) The company is not a company incorporated for charitable purposes under section 8 of the Companies Act, 2013 or section 25 of the Companies Act, 1956;
- (v) The company does not have any management disputes or there is no litigation pending with regard to management or shareholding of the company;
- (vi) No order is in operation staying filing of the documents by a court or tribunal or any other competent authority;
- (vii) The company is not prevented from making the applications for strike off as mentioned in section 249 of the Act.

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Signature _____

(Deponent)

Verification:-

I verify that the contents of this affidavit are true to the best of my knowledge and belief.

Place:

Signature_____ (Deponent)

Date:

Note: Attention is also drawn to provisions of section 449 which provide for punishment for false evidence.

Annexure IV

Statement of Account*

Name of the Company:

Year to which the Statement of Account pertains:

Part A

Particulars:

I. Sources of Funds

(Brief break up in respect of each item needs to be given).

- (1) Capital
- (2) Reserves & Surplus (including balance in Profit and Loss Account)
- (3) Loan Funds
- Total of (1) to (3)

II. Application of Funds

(Brief break up in respect of each item needs to be given).

- (1) Fixed Assets
- (2) Investments
- (3) (i) Current Assets, loans and Advances
Less: (ii) Current Liabilities and provisions
Net Current assets (i) - (ii)
- (4) Miscellaneous expenditure to the extent not written off or adjusted
- (5) Profit & Loss Account (Debit balance)
- Total of 1 to 5

Part B

Particulars

(Brief break up in respect of each item needs to be given).

- I. Income
- II. Expenditure

620 PP-ACL&P

- III. Profit/Loss before Tax (MI)
- IV. Appropriation in case of profit

Date:

Place:

Signature (Secretary/Applicant*)

*Applicable only if there is MD/Secretary.

Annexure V
FORM No. STK - 5
PUBLIC NOTICE

[Pursuant to sub-section (1) and sub-section (4) of section 248 of the Companies Act, 2013 and rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
Office of the Registrar of Companies
(Address of RoC)

Public Notice No. _____

Date: _____

Reference:

In the matter of striking off of companies under section 248 (1) of the Companies Act, 2013, of M/s. _____ ,
M/s. _____, M/s _____

1. Notice is hereby given that the Registrar of Companies has a reasonable cause to believe that -
 - (i) The following companies have not commenced business within one year of their incorporation.
M/s _____ (indicate names of companies)
M/s _____
 - (ii) The following companies have not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of dormant company under section 455.
M/s. _____
M/s. _____ (indicate name of companies)

And, therefore, proposes to remove/strike off the names of the above mentioned companies from the register of companies and dissolve them unless a cause is shown to the contrary, within thirty days from the date of this notice.

2. Any person objecting to the proposed removal/striking off of name of the companies from the register of companies may send his/her objection to the office address mentioned hereabove within thirty days from the date of publication of this notice.

Registrar of Companies

Annexure VI FORM

No. STK – 5A

PUBLIC NOTICE

[Pursuant to sub-section (1) and sub-section (4) of section 248 of the Companies Act, 2013 and second proviso to rule 7(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

GOVERNMENT OF INDIA MINISTRY
OF CORPORATE AFFAIRS Office of
the Registrar of Companies (Address of
RoC)

Public Notice No._____

Date:_____

Reference:

In the matter of striking off names of companies under section 248 (1) of the Companies Act, 2013, of the companies as per details below:—

1. Notice is hereby given that the Registrar of Companies has a reasonable cause to believe that, the companies, whose names are listed on the _____ (provide web link of the page on Ministry's website where the names are listed),-
 - (i) have not commenced business within one year of their incorporation; OR
 - (ii) have not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of dormant company under section 455 of the Companies Act, 2013.

[Strike off whichever is not applicable]

And, therefore, proposes to remove/strike off the names of the above mentioned companies from the register of companies and dissolve them unless a cause is shown to the contrary, within thirty days from the date of such notice.

2. Any person objecting to the proposed removal/striking off of name of the companies from the register of companies may send his objection to the office address mentioned hereabove within thirty days from the date of publication of this notice.

Registrar of Companies

Annexure VII

FORM No. STK – 6

PUBLIC NOTICE

[Pursuant to sub-section (2) and sub-section (4) of section 248 of the Companies Act, 2013 and Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Public Notice No. _____

Date: _____

Reference:

In the matter of striking off or removal of names of companies under section 248(2) of the Companies Act, 2013 in respect of:

- 1. M/s. _____,
- 2. M/s. _____,
- 3. M/s _____

- (1) Notice is hereby given that the Registrar of Companies had received applications from the above mentioned companies under section 248(2) of the Companies Act, 2013 for removal of its/their name(s) from the register of companies either on the ground that they have failed to commence business within one year of their incorporation or on the ground that the company(ies) is/are not carrying on any business or operation for a period of two immediately preceding financial years and has/have not made any application(s) within such period for obtaining the status of a dormant company under section 455 of the Companies Act, 2013 or the company(ies) have obtained the status of dormant company, but it/they do not wish to continue its/their registration as companies and have, therefore, requested for removal/ strike off of its/their names from the register of companies.
- (2) Accordingly, the Registrar of Companies proposes to remove or strike off the names of the above mentioned companies from the Register of Companies.
- (3) Any person objecting to the proposed removal or striking off of name of the companies from the register of companies may send his or her objection to the office address mentioned here above within thirty days from the date of publication of this notice.

Registrar of Companies

Annexure VIII

FORM No. STK - 7

NOTICE OF STRIKING OFF AND DISSOLUTION

[Pursuant to sub-section (5) of section 248 of the Companies Act, 2013 and rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
Office of the Registrar of Companies
(Address of RoC)

Dated: _____

Reference:

In the matter of Companies Act, 2013 and of M/s _____, CIN _____

This is with respect to this Office's Notice No. _____ dated _____ application (Form STK 2) dated _____ vide SRN and notice in form STK 5 issued on dated _____. Notice is hereby published

that pursuant to sub-section (5) of Section 248 of the Companies Act, 2013 the name of M/s _____
_____ has this day of been struck off the register of companies and the said Company is dissolved.

Registrar of Companies

Mailing Address of the company as per record available in Registrar of Companies office:

M/s _____

LESSON ROUND-UP

- A “vanishing company” means a company, registered under the Act or previous law or any other law for the time being in force and listed with Stock Exchange which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable.
- The Registrar may on its own motion proceed to remove the name of the Company from Registers of Companies, if he has reasonable cause to believe that a company is not carrying on business.
- The Registrar can exercise the power to strike off on receiving an application for the same under Section 248.
- An application for removal of name of the company shall be made in **Form STK-2** along with the fee of five thousand rupees.
- The Registrar shall cause a notice of striking off the name of the company from the register of companies and its dissolution to be published in the Official Gazette in **Form STK 7** and the same shall also be placed on the official website of the Ministry of Corporate Affairs.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Define dormant company.
2. Explain the procedure for removing the name of the Company from Register of Companies by Registrar on his own motion.
3. Draft a Board resolution for getting the name of company removed from Registers of Companies.
4. Discuss the procedure for obtaining status of a dormant company under Companies Act, 2013.

Lesson 18

Recent Trends and Developments in Company Law

LESSON OUTLINE

- Modernization Of Company Law For Global Competitiveness
- Distinguishing features of Company Law in various countries
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The governments the world over recognized the importance of companies as an engine for economic growth. It is widely acknowledged that companies have become the centre of or even the driving force behind the emergence and growth of modern global economy. Therefore, to ensure that companies continue to play their role as an engine for economic growth, there is an international drive to review, reconstruct and recognize the law governing companies. Several countries are also aiming to ensure that corporate activities function within a modern, and forward looking regulatory frame work that supports and sustains their economic growth. This lesson covers salient features of company law emerged/emerging in the following countries:

- United Kingdom
- The United States of America
- Australia
- Canada
- Hongkong
- Singapore

1. MODERNIZATION OF COMPANY LAW FOR GLOBAL COMPETITIVENESS

Most of the countries in the world today including UK, Hong Kong, Singapore, Australia and Canada are in the various stages of modernizing their company law. A fair modern and effective framework of company law is crucial to the performance of any economy and society. To achieve competitiveness, it is essential that while the law must balance the needs of many interests, for example, shareholders, directors, employees, creditors and customers, it must also avoid unnecessary burdens.

In the current national and international scenario of complex business operations, there is a need for simplifying corporate laws so that they are amenable to clear interpretation and provide a framework that would facilitate faster economic growth. It is also being recognised that the framework for regulation of corporate entities has not only to be in tune with the emerging economic scenario, it must also encourage good corporate governance and enable protection of the interests of investors and other stakeholders.

Growing emphasis on good corporate governance, corporate social responsibility and good corporate citizenship is predominantly influencing company law reforms the world over. Modernization of company law has in fact become a part of the drive to facilitate enterprise, enhance the attractiveness of the country as a preferred destination to do business and foster business competitiveness. The overall objective is to achieve a simple, consolidated and accessible company law. Simultaneously, worldwide the Company Law reforms are focusing on transparency through enhanced disclosures and increased accountability on the part of corporate owners while at the same time providing a flexible regime for small and medium businesses. Additionally, the reforms aim at cutting back on overly regulatory intervention thus providing companies operating flexibility to tune in conformity with changing environment.

The litmus test lies in the harmonization of company law with that of global standards, the process which has been started about a decade ago in most countries, so as to achieve global competitiveness.

2. DISTINGUISHING FEATURES OF COMPANY LAW IN VARIOUS COUNTRIES

A. United Kingdom (U.K.)

Company Law in U.K. has undergone major reform under the Company Law Review (CLR), the objective of which was to modernize the legal framework in which companies operate. In 1998, the Government commissioned an independent Company Law Review Group, comprising experts, practitioners and business people to take a long-term fundamental look at core company law and to see how it could be brought upto date. The CLR conducted a thorough review and assessment and provided the essential blue print in the form of a Report in 2001. As a response to the final Report of the Company Law Review, the Government brought out White Paper on Company Law 2002, introducing which the then Competition Minister, Melanie Johnson stated "Our current company law is creaking with age and needs to modernize and reform. A thorough overhaul is needed to make the law clear and accessible".

The White Paper 2002 evoked huge response. Considering the suggestions received, the Department of Trade and Industry again released the UK White Paper on Company Law, 2005 which contained draft of the Companies Bill, and invited views. Consequently, New Company Law Reform Bill was introduced in Parliament in May, 2006 for discussion and approval.

The UK Companies Act, 2006 received Royal Assent on 8th November 2006. The Act will effectively replace existing companies' legislation with the exception of provisions relating to company investigations and community interest companies.

Salient features of Company Law in U.K. (Companies Act, 2006)

Mode of forming incorporated company (Section 7)

Any one or more persons associated for a lawful purpose may, by subscribing their names to the memorandum of association and otherwise complying with the requirement of the Act in respect of registration, form an incorporated company, with or without limited liability. A company may not be so formed for an unlawful purpose.

Minimum Authorized capital (public companies) (Section 763)

The amount of share capital with which the public company is proposed to be registered, must not be less than the authorized minimum (£ 50,000 or the prescribed euro equivalent or such other sum as the Secretary of State may by order specify).

Minimum membership (for carrying on business)

If a company, other than a private company limited by shares or by guarantee, carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months (a) is a member of the company and (b) knows that it is carrying on business with only one member, is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or, as the case may be, that part of it. For the purpose of the said provision, references to a member of a company do not include the company itself where it is such a member only by virtue of its holding shares as treasury shares.

Power of directors to bind the company

In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorize others to do so, shall be deemed to be free of any limitation under the company's constitution. For this purpose, a person deals with a company if he is a party to any transaction or other act to which the company is a party; a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and a person shall be presumed to have acted in good faith unless contrary to be proved.

The references above to limitations on the directors' powers under the company's constitution include limitations deriving from a resolution of the company in general meeting or a meeting of any class of shareholders, or from any agreement between the members of the company or of any class of shareholders.

Treasury Shares (Section 724)

Where qualifying shares are purchased by a company out of distributable profits, the company may (a) hold shares (or any of them) or (b) deal with any of them, at any time, in accordance with section 727 or 729 for disposal and cancellation of treasury shares. When shares are held under (a) above, then the name of the company must be entered in the register as the member holding those shares. For the purpose of the Act, references to a company holding shares as treasury shares are references to the company holding shares which (a) were (or are treated as having been) purchased by it in circumstances in which this section applies, and (b) have been held by the company continuously since they were so purchased. (or treated as purchase)

Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10 per cent of the nominal value of the issued share capital of the company at that time.

Directors (Section 154)

Every public company shall have at least two directors and every private company is required to have at least one director.

- A person may not be appointed a director of a company unless he has attained the age of 16 years (Section 157)

Appointment of directors of public company to be voted on individually (Section 160)

A motion for the appointment of two or more persons as directors of the company by a single resolution at a general meeting of a public company cannot be made. It can be done, if a resolution in this regard has first been agreed to by the meeting without any vote being given against it.

Validity of acts of directors (Section 161)

(1) The acts of a person acting as a director are valid even if it is afterwards discovered —

- (a) that there was a defect in his appointment;
- (b) that he was disqualified from holding office;
- (c) that he had ceased to hold office;
- (d) that he was not entitled to vote on the matter in question.

(2) This applies even if the resolution for this appointment void under section 160.

Register of directors (Section 162, 163, 164, 165)

Every company must keep a register of its directors. The register must contain the following particulars of each person who is a director of the company:

- in the case of an individual—
name and any former name; a service address; the country or state (or part of the United Kingdom) in which he is usually resident; nationality; business occupation (if any); date of birth.
- in the case of a body corporate, or a firm that is a legal person under the law by which it is governed—
corporate or firm name; registered or principal office;
- in the case of an EEA company to which the First Company Law Directive (68/151/EEC) applies, particulars of—
 - (i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and (ii) the registration number in that register;
- in any other case, particulars of—
the legal form of the company or firm and the law by which it is governed, and if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

The register must be kept available for inspection —

- (a) at the company's registered office, or
- (b) at a place specified in regulations

The company must give notice to the registrar of the place at which the register is kept available for inspection, and of any change in that place, unless it has at all times been kept at the company's registered office.

The register must be open to the inspection of any member of the company without charge, and of any other person on payment of such fee as may be prescribed.

Resolution to remove director (Section 168)

A company may by ordinary resolution at a meeting remove a director before the expiration of his period of office, notwithstanding anything in any agreement between it and him.

Special notice is required of a resolution to remove a director or to appoint somebody instead of a director so removed at the meeting at which he is removed.

A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

Duty of directors (Section 171)

A director of a company must–

- (a) act in accordance with the company's constitution, and
- (b) only exercise powers for the purposes for which they are conferred.
 - A director is under duty to promote the success of the Company. (Section 172)
 - A director is under duty to exercise independent judgment. (Section 173)
 - A director is under duty to exercise reasonable care, skill and diligence. (Section 174)
 - A director is under duty to avoid conflicts of interest. (Section 175)
 - A director is under duty not to accept benefits from third parties. (Section 176)
 - A director is under duty to declare interest in proposed transaction or arrangement. (Section 177)
 - A General notice in accordance with section 185 is a sufficient declaration of interest in relation to the matters to which it relates.

Duty to prepare directors' remuneration report (Section 420 & 422)

The directors of a quoted company shall for each financial year prepare a directors' remuneration report which shall contain the information specified in the Schedule to Act and comply with any requirement of that Schedule as to how the information is to be set out in the report. The directors' remuneration report shall be approved by the Board of directors and signed on behalf of the Board by a director or the secretary of the company. Every copy of the said report which is laid before the company in general meeting or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the Board. The copy of the directors' remuneration report which is delivered to the registrar shall be signed on behalf of the Board by a director or the secretary of the company.

Members' approval of directors' remuneration report

The company must, prior to the meeting, give to the members of the company notice of the resolution to be moved at the meeting, as an ordinary resolution for approving the directors' remuneration report for the financial year. Notice shall be given to each such member in any manner permitted for the service on him of notice of the meeting. The business that may be dealt with at the meeting shall include the resolution. The existing directors must ensure that the resolution is put to vote at the meeting. No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made. If the resolution is not put to the vote at the meeting, each existing director is guilty of an offence and liable to a fine.

Secretary (Section 271, 273)

A Private Company is not required to have a Secretary. A public Company must have a secretary.

It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company –

- (a) is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company, and
- (b) has one or more of the following qualifications.

The qualifications are –

- (a) that he has held the office of secretary of a public company for at least three of the five years immediately preceding his appointment as secretary;
- (b) that he is a member of any of the bodies specified as below—
 - (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants of Scotland;
 - (c) the Association of Chartered Certified Accountants;
 - (d) the Institute of Chartered Accountants in Ireland;
 - (e) the Institute of Chartered Secretaries and Administrators;
 - (f) the Chartered Institute of Management Accountants;
 - (g) the Chartered Institute of Public Finance and Accountancy.
- (c) that he is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom;
- (d) that he is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging the functions of secretary of the company.

Duty to keep register of secretaries (Section 275)

- (1) A company must keep a register of its secretaries.
- (2) The register must contain the required particulars of the person who is, or persons who are, the secretary or joint secretaries of the company.
- (3) The register must be kept available for inspection—
 - (a) at the company's registered office, or
 - (b) at a place specified in regulations
- (4) The company must give notice to the registrar—
 - (a) of the place at which the register is kept available for inspection, and
 - (b) of any change in that place, unless it has at all times been kept at the company's registered office.
- (5) The register must be open to the inspection—
 - (a) of any member of the company without charge, and
 - (b) of any other person on payment of such fee as may be prescribed.

Duty to notify registrar of changes (Section 276)

- (1) A company must, within the period of 14 days from—
 - (a) a person becoming or ceasing to be its secretary or one of its joint secretaries, or
 - (b) the occurrence of any change in the particulars contained in its register of secretaries, give notice to the registrar of the change and of the date on which it occurred.
- (2) Notice of a person having become secretary, or one of joint secretaries, of the company must be accompanied by a consent by that person to act in the relevant capacity.
- (3) If default is made in complying with this section, an offence is committed by every officer of the company who is in default.

(4) For this purpose a shadow director is treated as an officer of the company.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale &, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

Duty to keep accounting records (Section 386)

Every company must keep adequate accounting records.

Adequate accounting records means records that are sufficient—

- (a) to show and explain the company's transactions,
- (b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and
- (c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

Accounting records must, in particular, contain—

- (a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and
- (b) a record of the assets and liabilities of the company.

If the company's business involves dealing in goods, the accounting records must contain—

- (a) statements of stock held by the company at the end of each financial year of the company,
- (b) all statements of stocktakings from which any statement of stock as is mentioned in paragraph (a) has been or is to be prepared, and
- (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

Where and for how long records to be kept (Section 388)

A company's accounting records—

- (a) must be kept at its registered office or such other place as the directors think fit, and
- (b) must at all times be open to inspection by the company's officers.

If accounting records are kept at a place outside the United Kingdom, accounts and returns with respect to the business dealt with in the accounting records so kept must be sent to, and kept at, a place in the United Kingdom, and must at all times be open to such inspection.

The accounts and returns to be sent to the United Kingdom must be such as to—

- (a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months, and
- (b) enable the directors to ensure that the accounts required to be prepared under this Part comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

Accounting records that a company is required by section 386 to keep must be preserved by it—

- (a) in the case of a private company, for three years from the date on which they are made;
- (b) in the case of a public company, for six years from the date on which they are made.

A company's financial year (Section 390)

A company's financial year is determined as follows.

Its first financial year—

- (a) begins with the first day of its first accounting reference period, and
- (b) ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

Subsequent financial years—

- (a) begin with the day immediately following the end of the company's previous financial year, and
- (b) end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

In relation to an undertaking that is not a company, references in this Act to its financial year are to any period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not.

The directors of a parent company must secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company's own financial year.

Accounts to give true and fair view (Section 393)

The directors of a company must not approve accounts for the purposes of this Chapter unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss—

- (a) in the case of the company's individual accounts, of the company;
- (b) in the case of the company's group accounts, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

The auditor of a company in carrying out his functions under this Act in relation to the company's annual accounts must have regard to the directors' duty under sub-section (1).

Duty to prepare individual accounts (Section 394)

The directors of every company must prepare accounts for the company for each of its financial years. (unless the company is exempt from the requirement under section 394A). Those accounts are referred to as the company's "individual accounts".

Approval and signing of accounts (Section 414)

A company's annual accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.

The signature must be on the company's balance sheet.

If the accounts are prepared in accordance with the provisions applicable to companies subject to the small companies regime, the balance sheet must contain a statement to that effect in a prominent position above the signature.

Every copy of the balance sheet which is laid before the company in general meeting or which otherwise circulated, published or issued, shall state the name of the person who signed the balance sheet on behalf of the Board. The copy of the company's balance sheet which is delivered to the Registrar shall be signed on behalf of the Board by a director of the company.

If annual accounts are approved that do not comply with the requirements of this Act, every director of the company who—

- (a) knew that they did not comply, or was reckless as to whether they complied, and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved, commits an offence.

A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

Approval and signing of directors' report (Section 419)

- (1) The directors' report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.
- (2) If in preparing the report, advantage is taken of the small companies exemption, it must contain a statement to that effect in a prominent position above the signature.
- (3) If a directors' report is approved that does not comply with the requirements of this Act, every director of the company who—
 - (a) knew that it did not comply, or was reckless as to whether it complied, and
 - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved, commits an offence.
- (4) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Duty to file accounts and reports with the registrar (Section 441)

The directors of a company must deliver to the registrar for each financial year the accounts and reports required by—

- section 444 (filing obligations of companies subject to small companies regime), section 445 (filing obligations of medium-sized companies),
- section 446 (filing obligations of unquoted companies), or
- section 447 (filing obligations of quoted companies).

This is subject to section 448 (unlimited companies exempt from filing obligations).

Section 448A (dormant subsidiaries exempt from filing obligations).

Period allowed for laying and delivering accounts and reports (Section 442)

This section specifies the period allowed for directors of a company to comply with their obligation under Section 441 to deliver accounts and reports for a financial year to the Registrar. This is referred to in the Companies Acts as the "period for filing" those accounts and reports.

The period allowed for laying and delivering accounts and reports is for a private company, 9 months after the end of the relevant accounting reference period, and for a public company, 6 months after the end of that period. If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is (a) 9 months or 6 months, as the case may be, from the first anniversary of the incorporation of the company, or (b) 3 months after the end of the accounting reference period, whichever last expires.

The 'relevant accounting reference period' means the accounting reference period by reference to which the financial year for the accounts in question was determined.

Requirement for audited accounts (Section 475)

A company's annual accounts for a financial year must be audited in accordance with this Part unless the company—

- (a) is exempt from audit under section 477 (small companies), section 479A (subsidiary companies), or section 480 (dormant companies); or
- (b) is exempt from the requirements of this Part under section 482 (nonprofit-making companies subject to public sector audit).

A company is not entitled to any such exemption unless its balance sheet contains a statement by the directors to that effect.

A company is not entitled to exemption under any of the provisions mentioned in sub-section (1)(a) unless its balance sheet contains a statement by the directors to the effect that—

- (a) the members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 476, and
- (b) the directors acknowledge their responsibilities for complying with the requirements of this Act with respect to accounting records and the preparation of accounts.

The statement required by sub-section (2) or (3) must appear on the balance sheet above the signature required by section 414.

Right of members to require audit (Section 476)

The members of a company that would otherwise be entitled to exemption from audit under any of the provisions mentioned in section 475(1)(a) may by notice under this section require it to obtain an audit of its accounts for a financial year.

The notice must be given by—

- (a) members representing not less in total than 10% in nominal value of the company's issued share capital, or any class of it, or
- (b) if the company does not have a share capital, not less than 10% in number of the members of the company.

The notice may not be given before the financial year to which it relates and must be given not later than one month before the end of that year.

Duties of auditor (Section 498)

(1) A company's auditor, in preparing his report, must carry out such investigations as will enable him to form an opinion as to—

- (a) whether adequate accounting records have been kept by the company and returns adequate for their audit have been received from branches not visited by him, and
- (b) whether the company's individual accounts are in agreement with the accounting records and returns, and
- (c) in the case of a quoted company, whether the auditable part of the company's directors' remuneration report is in agreement with the accounting records and returns.

- (2) If the auditor is of the opinion—
- (a) that adequate accounting records have not been kept, or that returns adequate for their audit have not been received from branches not visited by him, or
 - (b) that the company's individual accounts are not in agreement with the accounting records and returns, or
 - (c) in the case of a quoted company, that the auditable part of its directors' remuneration report is not in agreement with the accounting records and returns, the auditor shall state that fact in his report.
- (3) If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.
- (4) If—
- (a) the requirements of regulations under section 412 (disclosure of directors' benefits: remuneration, pensions and compensation for loss of office) are not complied with in the annual accounts, or
 - (b) in the case of a quoted company, the requirements of regulations under section 421 as to information forming the auditable part of the directors' remuneration report are not complied with in that report, the auditor must include in his report, so far as he is reasonably able to do so, a statement giving the required particulars.
- (5) If the directors of the company (a) have prepared accounts and reports in accordance with the small companies regime or (b) have taken advantage of small companies exemption in preparing the director's report, and in the auditor's opinion they were not entitled so to do, the auditor shall state that fact in his report.

Resolution removing auditor from office (Section 510)

- (1) The members of a company may remove an auditor from office at any time.
- (2) This power is exercisable only—
- (a) by ordinary resolution at a meeting, and
 - (b) in accordance with section 511 (special notice of resolution to remove auditor).
- (3) Nothing in this section is to be taken as depriving the person removed of compensation or damages payable to him in respect of the termination—
- (a) of his appointment as auditor, or
 - (b) of any appointment terminating with that as auditor.
- (4) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

Part 24 of the Companies Act 2006 of UK relates to a Company's Annual Return

Annual Return

As per Section 854, every company must deliver to the registrar successive annual return each of which is made up to a date not later than the date that is the Company's return date.

The Company's return date is the anniversary of the Company's incorporation or if the Company's last return delivered in accordance with this part was made up to a different date, then the anniversary of that date.

Contents of annual return

- General – address, type of company, particulars of directors, secretary etc.;
- Information about share capital

- Information about shareholders

B. THE UNITED STATES OF AMERICA (USA)

The United States is undoubtedly one of the richest source of legislation, case laws and debate about corporations. There is no federal corporations statute as such. Each state has its own corporate law regime which resulted in competition

among states to attract incorporations. State incorporation has produced a wide diversity of legislation and experimentation in the corporate form. The situation is, however not as chaotic as might be implied by the existence of nearly fifty different corporate laws operating in the same country. There are several mitigating factors promoting harmonisation, cooperation and, in some cases, uniformity across the United States.

The first is the federal Constitution. Although there is no express federal jurisdiction to govern incorporations, the various clauses of interstate commerce provides a myriad of federal legislative provisions which apply to state incorporated entities. In this way, uniformity of standards and treatment in certain areas is assured i.e. anti-trust, bankruptcy, securities, among others. In addition, the court structure is such that the so-called “diversity jurisdiction” of the federal court system may catch commercial litigation, thus developing a body of federal case law applicable to corporations.

The most significant of these federal laws applicable to corporations is the federal securities regime. The United States has a long tradition of individual ownership of securities. It began with the bonds of railroads and other enterprises as they developed early in the history of the country and particularly during the post-civil war period. This wide dispersion of ownership resulted in the separation of ownership and control; the predominance of individual ownership is reflected in the federal securities laws adopted in 1933 and 1934 (in reaction to the stock market crash of 1929) in the interests of public investor protection. The agency created to administer this legislation, the Securities and Exchange Commission (SEC), has grown to be one of the most powerful administrative agencies in the world. Although there have been jurisdictional battles between the SEC and state legislatures over where the lines are drawn between corporate law matters and securities law matters (in the realm of take-overs, for example, during the 1980s), it remains the case that many areas of overlap respecting shareholders have been pre-empted by SEC action. Thus many matters characterised as “company law” elsewhere have been characterised in the United States as securities law and taken out of the orbit of the state legislatures.

A second harmonising factor has been the existence of model statutes. These serve variously as uniform acts or as drafting guides which may be customised by each individual state. A Uniform Business Corporation Act was sponsored in 1928 and adopted by a few states. It was renamed the Model Business Corporation Act in 1943 and then withdrawn in 1958. It was supplanted in 1946 by the American Bar Association Model Business Corporations Act (MBCA) which was revised almost annually after that. During the 1960s, the “march of American state corporation law became a march toward uniformity”. By 1977, 34 of the 50 states had adopted MBCA statutes. In 1984, the Model Business Corporation Act was itself supplanted by the **Revised Model Business Corporation Act (RMBCA)** (the “revised” was recently dropped but is retained here to distinguish it from its predecessor). A large number of states adhere to one or the other Model Acts, with the RMBCA gaining adherents.

Salient features of RMBCA of U.S. Corporations

A Business Corporation Act is the collection of laws in each state that governs corporations.

A model corporation statute compiled by the American Bar Association has been adopted in whole or in part by, or has influenced the statutes of many states.

Secretary (1.40)

(20) “Secretary” means the corporate officer to whom the board of directors has delegated responsibility under section 8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

Required Officers (Section 8.40)

- (a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.
- (b) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.
- (c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.
- (d) Unless the bylaws provided otherwise, the same individual may simultaneously hold more than one office in a corporation.

Duties of Officers (Section 8.41)

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Standards of Conduct for Officers (Section 8.42)

- (a) An officer, when performing in such capacity, shall act:
 - (1) in good faith;
 - (2) with the care that a person in a like position would reasonably exercise under similar circumstances; and
 - (3) in a manner the officer reasonably believes to be in the best interests of the corporation.
- (b) In discharging those duties an officer, who does not have knowledge that makes reliance unwarranted, is entitled to rely on:
 - (1) the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or
 - (2) information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, certified public account, outs or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence.
- (c) An officer shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as an officer, if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of Section 8.31 that have relevance.

Resignation and Removal of Officers (Section 8.43)

- (a) An officer may resign at any time by giving notice to the corporation. A resignation is effective when the notice is given unless the notice specifies a later effective date. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or the appointing officer provides that the successor does not take office until the effective date.
- (b) An officer may be removed at any time with or without cause by: (i) the board of directors; (ii) the officer

who appointed such officer, unless the bylaws or the board of directors provide otherwise; or (iii) any other officer if authorized by the bylaws or the board of directors.

- (c) In this section, "appointing officer" means the officer (including any successor to that officer) who appointed the officer resigning or being removed.

Incorporators (Section 2.01)

One or more individuals may act as the incorporator or incorporators of a corporation by signing & believing articles of incorporation to the judge of probate of the country in which the corporation is to have its initial registered office for filing.

Incorporation (Section 2.03)

- (a) Upon the effectiveness of filing of the articles, corporate existence begins.

Purposes (Section 3.01)

- (a) Every corporation incorporated under this Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.
- (b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this Act only if permitted by, and subject to all limitations of, the other statute.

Corporate Name (Section 4.01)

- (a) A corporate name:
 - (1) must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language; and
 - (2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by relevant section and its articles of incorporation.
- (b) Except as authorized by sub-sections (c) and (d), a corporate name must be distinguishable upon the records of the secretary of state from:
 - (1) the corporate name of a corporation incorporated or authorized to transact business in this state;
 - (2) a corporate name reserved or registered under the Act;
 - (3) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable; and
 - (4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.
- (c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon his records from one or more of the names described in sub-section (b). The secretary of state shall authorize use of the name applied for if:
 - (1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or
 - (2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation

- (1) has merged with the other corporation;
 - (2) has been formed by reorganization of the other corporation; or
 - (3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.
- (e) This Act does not control the use of fictitious names.

Annual Meeting (Section 7.01)

- (a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.
- (b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.
- (c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws doesn't affect the validity of any corporate action.

Special Meeting (Section 7.02)

- (a) A corporation shall hold a special meeting of shareholders:
 - (1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or
 - (2) if the holders of at least 10 percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25 percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

Court-Ordered Meeting (Section 7.03)

- (a) The [name or describe] court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:
 - (1) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or
 - (2) on application of a shareholder who signed a demand for a special meeting valid, if:
 - (i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or
 - (ii) the special meeting was not held in accordance with the notice.
- (b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Quorum and Voting Requirements for Voting Groups (Section 7.25)

- (a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this Act provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.
- (b) Once a share is represented for any purpose at a meeting, it is, unless established the contrary, presumed present for quorum purposes for the remainder of the meeting.
- (c) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this Act require a greater number of affirmative votes.

Voting Trusts (Section 7.30)

- (a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.
- (b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date unless extended under sub-section (c).
- (c) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

Requirement for and Duties of Board of Directors (Section 8.01)

- (a) Except as provided in section 7.32, each corporation must have a board of directors.
- (b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section 7.32.

Qualifications of Directors (Section 8.02)

The articles of incorporation or bylaws may prescribe qualifications for directors. A director shall be a natural person of the age of at least nineteen (19) years but need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

Number and Election of Directors (Section 8.03)

- (a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
- (b) If a board of directors has power to fix or change the no. of directors, directors last approved by the shareholders, but only the number of directors last approved by the shareholders, the board may increase or decrease by 30 per cent or less the number of shareholders may increase or decrease by more than 30 per cent.
- (c) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 8.06.

Resignation of Directors (Section 8.07)

- (a) A director may resign at any time by delivering written notice to the board of directors, its chairman, or to the corporation.
- (b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date

Meetings (Section 8.20)

- (a) The board of directors may hold regular or special meetings in or out of this state.
- (b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Dissolution by Incorporators or Initial Directors (Section 14.01)

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the judge of probate for filing articles of dissolution that set forth:

- (1) the name of the corporation;
- (2) the date of its incorporation;
- (3) either (i) that none of the corporation's shares has been issued or (ii) that the corporation has not commenced business;
- (4) that no debt of the corporation remains unpaid;
- (5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (6) that a majority of the incorporators or initial directors authorized the dissolution.

Dissolution by Board of Directors and Shareholders (Section 14.02)

- (a) A corporation's board of directors may propose dissolution for submission to the shareholders.
- (b) For a proposal to dissolve to be adopted:
 - (1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders; and
 - (2) the shareholders entitled to vote must approve the proposal to dissolve as provided in sub-section (e).
- (c) The board of directors may condition its submission of the proposal for dissolution on any basis, except that the Board of directors may not decrease the vote required for approval under sub-section (e).
- (d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.
- (e) Unless this chapter, the articles of incorporation, or the board of directors, [acting pursuant to subsection (c)], require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:
 - (1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and
 - (2) The votes required by every other voting group entitled to vote on the amendment.

Corporate Records (Section 16.01)

- (a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.
- (b) A corporation shall maintain appropriate accounting records.
- (c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.
- (d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (e) Each domestic corporation & any foreign corporation shall keep a copy of the following records at its principal office:
 - (1) its articles or restated articles of incorporation and all amendments to them currently in effect;
 - (2) its bylaws or restated bylaws and all amendments to them currently in effect;
 - (3) resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
 - (4) the minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years
 - (5) all written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 16.20;
 - (6) a list of the names and business addresses of its current directors and officers; and
 - (7) its most recent annual report delivered to the secretary of state under section 16.22 or public record information filed with the Department of Revenue in lieu thereof.

C. AUSTRALIA**Legislative history**

In Australia, prior to the adoption of the U.K. Joint Stock Companies Act, 1844, by the various colonies, private companies generally operated as unincorporated deed-of-settlement joint-stock companies.

Public utility companies were either incorporated by Royal Charter, or were conferred with powers to sue and be sued in the name of an officer by private act. Most of the colonies passed legislation based on the British Companies Act, 1862, which was subsequently modified over the years.

The "no liability" mining company was developed in 1871, while compulsory auditing and financial information provisions were enacted as early as 1896. However, these provisions applied only to publicly traded companies; private companies, to which the new requirements did not apply, were defined as proprietary companies, which are still a viable form of business organisation today.

The no liability company was developed in the speculative area of mining investment. It was first provided for in the Mining Companies Act, 1871. At the time, mining concerns, which formed companies limited by shares, sometimes found it difficult to recover unpaid calls of share capital. Shareholders often bought their stakes under fictitious names and would simply abandon their holdings if the venture proved less fruitful. The noteworthy aspect of the no liability company is that a member who does not pay calls is liable to the forfeiture of his shares.

Although the memorandum of association of a no liability company had to state that acceptance of shares did not constitute a contract to pay calls or contribute towards the payment of the company's debts, a no liability company could nevertheless contract around this.

Corporations Law

In Australia corporations are registered and regulated by the Commonwealth Government. Corporations law has been largely codified in the Corporations Act 2001. The Act is the result of a successful High Court of Australia challenge in *New South Wales v Commonwealth* (1990) 169 CLR 482 ('The Corporations Act Case'). The Commonwealth was found to have insufficient power to legislate in relation to the formation of companies. Section 51(xx) of the Australian Constitution was found to provide sufficient power for legislation applicable to foreign corporations and corporations already formed within the Commonwealth. To some extent, the Act was an outcome of the resolve of the Federal Parliament to establish modern national laws to govern corporations and the securities market so as to establish the governing rules and to provide a pyramid of graduated responses where the law was shown to have been broken.

The Corporations Act, 2001, sometimes referred to just as the Corporations Act is presently the largest corporations statute in the world. It is an act of the Commonwealth of Australia. This Act sets out the laws dealing with business entities in Australia at federal and interstate level. Although the focus of the Act is primarily on companies, it also covers some laws relating to other entities such as partnerships and managed investment schemes. All states have adopted the Act.

The Corporations Act is the principal legislation regulating companies in Australia. It regulates matters such as the formation and operation of companies (in conjunction with a constitution that may be adopted by a company), duties of officers, takeovers and fund raising.

The Act gives statutory force to many common law principles and imposes a number of additional fiduciary duties on directors of incorporated bodies. Breach of statutory duties draws penalties under the Act which range up to \$220,000. Under both the common law and the Corporations Act 2001, officers may also be required to pay compensation or to account for profits. In some cases directors may also be disqualified from office.

The Corporation Regulations 2001 contains all the regulations made under the Corporations Act, 2001.

Salient features of Australian Corporations Act

Structure and functions of the Board

Under the Corporations Act, a proprietary company must have at least one director. That director must ordinarily reside in Australia. For this purpose, a proprietary company is a company that is registered as, or converts to, a proprietary company under this Act.

A proprietary company must:

- be limited by shares or be an unlimited company with a share capital
- have no more than 50 non-employee shareholders
- not do anything that would require disclosure to investors under the Chapter of the Act (except in limited circumstances).

Further a public company must have at least 3 directors (not counting alternate directors). At least 2 directors must ordinarily reside in Australia. Only an individual who is at least 18 may be appointed as a director of a company. A person who is disqualified from managing corporations may only be appointed as director of a company if the appointment is made with permission granted by Australian Securities and Investments Commission under the leave granted by the Court.

The business of a company is to be managed by or under the direction of the directors. The directors may

exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting. For example, the directors may issue shares, borrow money and issue debentures. The directors of a company may confer on a managing director any of the powers that the directors can exercise. The directors may revoke or vary a conferral of powers on the managing director.

The director of a proprietary company who is its only director and only shareholder may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting. The business of the company is to be managed by or under the direction of the director. For example, the director may issue shares, borrow money and issue debentures. The director of a proprietary company who is its only director and only shareholder may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The director may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

Appointment of Directors

Special Rules for the appointment of public company directors. There are special rules for appointment of directors of public company and the appointment of directors for single director/single shareholder proprietary companies. A resolution passed at a general meeting of a public company appointing or confirming the appointment of 2 or more directors is void unless:

- (a) the meeting has resolved that the appointments or confirmations may be voted on together; and
- (b) no votes were cast against the resolution.

The aforesaid requirement does not affect (a) a resolution to appoint directors by an amendment to the company's constitution (if any); or (b) a ballot or poll to elect two or more directors if the ballot or poll does not require members voting for one candidate to vote for another candidate.

For aforesaid purposes, a ballot or poll does not require a member to vote for a candidate merely because the member is required to express a preference among individual candidates in order to cast a valid vote.

Special Rules for the appointment of directors for single director/single shareholder proprietary companies. The director of a proprietary company who is its only director and only shareholder may appoint another director by recording the appointment and signing the record. If a person who is the only director and the only shareholder of a proprietary company dies; or cannot manage the company because of the person's mental incapacity; and a personal representative or trustee is appointed to administer the person's estate or property, the personal representative or trustee may appoint a person as the director of the company.

If the office of the director of a proprietary company is vacated because of the bankruptcy of the director; and the person is the only director and the only shareholder of the company; and a trustee in bankruptcy is appointed to the person's property; the trustee may appoint a person as the director of the company. A person who has a power of appointment as aforesaid may appoint themselves as director. A person appointed as a director of a company as aforesaid holds office as if they had been appointed in the usual way.

Remuneration of Directors

The directors of a company are to be paid the remuneration that the company determines by resolution. The company may also pay the directors' travelling and other expenses that they properly incur: (a) in attending directors' meetings or any meetings of committees of directors; and (b) in attending any general meetings of the company; and (c) in connection with the company's business.

Members may obtain information about director's remuneration.

A company must disclose the remuneration paid to each director of the company or a subsidiary (if any) by the company or by an entity controlled by the company if the company is directed to disclose the information by: (a) members with at least 5% of the votes that may be cast at a general meeting of the company; or (b) at least 100

members who are entitled to vote at a general meeting of the company. The company must disclose all remuneration paid to the director, regardless of whether it is paid to the director in relation to their capacity as director or another capacity.

The company must comply with the direction as soon as practicable by (a) preparing a statement of the remuneration of each director of the company or subsidiary for the last financial year before the direction was given; and (b) having the statement audited; and (c) sending a copy of the audited statement to each person entitled to receive notice of general meetings of the company.

Special Rules for single director/single shareholder proprietary companies.

A person who is the only director and the only shareholder of a proprietary company is to be paid any remuneration for being a director that the company determines by resolution. The company may also pay the director's travelling and other expenses properly incurred by the director in connection with the company's business.

Company secretaries

A company other than a proprietary company must have a company secretary. However, a proprietary company may choose to have a company secretary. The directors appoint the company secretary. A company secretary must be at least eighteen years old. If a company has only one company secretary, they must ordinarily reside in Australia. If a company has more than one company secretary, at least 1 of them must ordinarily reside in Australia.

A company secretary must consent in writing to holding the position of company secretary. The company must keep the consent and must notify ASIC of the appointment.

The same person may be both a director of a company and the company secretary.

Generally, a company secretary may resign by giving written notice of the resignation to the company. A company secretary who resigns may notify ASIC of the resignation. If the company secretary does not do so, the company must notify ASIC of the company secretary's resignation.

The company secretary is an officer of the company and, in that capacity, may be subject to the requirements imposed by the Corporations Act on company officers.

The company secretary has specific responsibilities under the Corporations Act, including responsibility for ensuring that the company:

- notifies ASIC about changes to the identities, names and addresses of the company's directors and company secretaries; and
- notifies ASIC about changes to the register of members; and
- notifies ASIC about changes to any ultimate holding company; and
- responds, if necessary, to an extract of particulars that it receives and that it responds to any return of particulars that it receives.

A company secretary's obligations may continue even after the company has been deregistered.

Auditors

The following may be appointed as auditor of a company for the purposes of the Act:

- (a) an individual;
- (b) a firm;
- (c) a company.

In case of Proprietary company, the directors may appoint an auditor for the company if an auditor has not been appointed by the company in general meeting.

The company may have more than one auditor. The appointment of a firm as auditor of a company is taken to be an appointment of all persons who, at the date of the appointment, are (a) members of the firm; and (b) registered company auditors. This is so whether or not those persons are resident in Australia.

The appointment of the members of a firm as auditors of a company or registered scheme, that is taken to have been made because of the appointment of the firm as auditor of the company or scheme, is not affected by the dissolution of the firm.

A report or notice that purports to be made or given by a firm appointed as auditor of a company is not taken to be duly made or given unless it is signed by a member of the firm who is a registered company auditor both:

- (a) in the firm name; and
- (b) in his or her own name.

A notice required or permitted to be given to an audit firm under the Corporations legislation may be given to the firm by giving the notice to a member of the firm.

For the purposes of criminal proceedings under this Act against a member of an audit firm, an act or omission by:

- (a) a member of the firm; or
- (b) an employee or agent of the audit firm;

acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is also to be attributed to the audit firm.

The directors of a public company must appoint an auditor of the company within one month after the day on which a company is registered as a company unless the company at a general meeting has appointed an auditor.

A public company must appoint an auditor of the company at its first AGM and appoint an auditor of the company to fill any vacancy in the office of auditor at each subsequent AGM.

An auditor holds office until the auditor dies; or is removed, or resigns, from office; or ceases to be capable of acting as auditor; or ceases to be auditor.

D. CANADA

Like the United States and Australia, Canada is a federal state with a multiplicity of corporate statutes. Unlike the United States, there is a federal corporations statute, the Canada Business Corporations Act (CBCA), as well as corporate legislation in each of the 10 provinces. Upon implementation of the CBCA in 1975, a deliberate and fairly successful effort was made to harmonize the provincial statutes to the new federal regime in Canada.

Again, unlike the United States, there is no federal securities regulator in Canada. Although Canada has adopted securities regimes which are very much American in concept and approach, each province has its own securities law regime.

Over the last two decades, regional variations have crept back into the harmonized provincial corporate statutes but overall they remain similar to the CBCA in general structure and detail. Some provincial legislatures have been more responsive to change than others and have renewed their corporate statutes with greater regularity than the federal government. This has resulted in some divergence in detail.

The CBCA, and the Dickerson Report which preceded it, continue to influence reforms in jurisdictions as diverse as South Africa, Singapore, Australia and New Zealand where concepts introduced by the CBCA and time-tested in Canada are now making their appearance. The CBCA has been complemented over the last twenty years by a broad range of judicial decisions.

About the Act

The CBCA sets out the legal and regulatory framework for nearly 235,000 federally incorporated corporations. Most CBCA corporations are small or medium-sized privately held companies. However, many large businesses have chosen to incorporate under the provisions of the CBCA, including almost half of Canada's largest publicly traded companies. As an important marketplace framework law, the CBCA is designed to enhance the efficiency and competitiveness of the Canadian marketplace.

As a framework statute, the CBCA provides the basic structure and standards for the direction and control of a corporation, but it does not prescribe how a corporation is to be run. The Act sets out the rules and provides the mechanisms to facilitate the interaction among shareholders, directors, management and other interested parties that determines corporate decision making. With respect to publicly traded corporations, some of the corporate governance provisions contained in the CBCA overlap with parallel provisions in provincial securities laws, such as the process for selecting directors and the rights of shareholders to participate in key corporate decisions.

When the CBCA came into force in 1975, it was considered a leading-edge corporate law statute. The evolution of the corporate marketplace since its enactment led to comprehensive amendments to the Act in 2001. Among other things, these amendments enhanced shareholder participation in corporate decision making, increased transparency and accountability, and further harmonized the Act with provincial securities laws. The overall effect was to facilitate entrepreneurship and assist corporations in meeting the challenges of an increasingly competitive global marketplace.

Today, Canada's corporate governance framework is well recognized internationally for its efficiency. In 2013, the World Bank ranked Canada third among 185 economies for a regulatory environment that is conducive to starting and operating a business and fourth in protecting investors. The efficacy of corporate boards of directors and the protection of minority shareholders' interests have also been identified by the World Economic Forum as factors that give Canada a competitive advantage over other countries.

The CBCA remains a well-functioning statute. Nevertheless, continuous changes and developments in the marketplace require constant monitoring to ensure that Canada's corporate regulatory structure meets the challenges of the future. To grow and thrive in the global knowledge-based economy, Canada needs a strong corporate governance framework that both reflects and facilitates the best practices of Canadian corporations.

Structure and functions of the Board

Under the CBCA, the articles of incorporation are to set out the number of directors or the minimum and maximum number of directors of the incorporation. A corporation may have one or more directors but if any of its issued securities are or were part of a distribution to the public and remain outstanding and are held by more than one person, the corporation is to have at least three directors, at least two of whom are not to be officers or employees of the corporation or its affiliates.

About the Consultation

Industry Canada is undertaking this consultation to ensure that the governance framework for CBCA corporations remains effective, fosters competitiveness, supports investment and entrepreneurial activity, and instills investor and business confidence.

Accordingly, we are interested in receiving comments on the full range of CBCA corporate governance matters, including those described below and in the attached discussion paper.

Issues under Review

The House of Commons Standing Committee on Industry, Science and Technology (the "Committee") conducted a statutory review of the CBCA in 2009–10. In June 2010, the Committee published a report that recommended that the Government consult on four issues: (1) rules relating to disclosure of executive compensation, (2) rules

applicable to shareholder voting and participation rights, (3) rules regarding the holding and transfer of shares and insider trading, and (4) rules applicable to the incorporation of socially responsible enterprises.

In addition to these issues, other issues have been identified for review and consultation. The topics include greater transparency of the ownership of corporations, the role of corporate governance legislation in preventing bribery and corruption, the diversity of the members composing corporate boards and management teams, takeover bid rules, the use of the arrangement provisions of the CBCA to restructure insolvent businesses, the role of corporate social responsibility, and administrative and technical reforms to the Act.

Salient features of Canada Business Corporations Act

INCORPORATION

Incorporators

5. (1) One or more individuals not one of whom
- (a) is less than eighteen years of age,
 - (b) is of unsound mind and has been so found by a court in Canada or elsewhere, or
 - (c) has the status of bankrupt,

may incorporate a corporation by signing articles of incorporation and complying with section 7.

Bodies Corporate

(2) One or more bodies corporate may incorporate a corporation by signing articles of incorporation and complying with section 7.

Articles of incorporation

6. (1) Articles of incorporation shall follow the form that the Director fixes and shall set out, in respect of the proposed corporation,
- (a) the name of the corporation;
 - (b) the province in Canada where the registered office is to be situated;
 - (c) the classes and any maximum number of shares that the corporation is authorized to issue, and
 - (i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares, and
 - (ii) if a class of shares may be issued in series, the authority given to the directors to fix the number of shares in, and to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;
 - (d) if the issue, transfer or ownership of shares of the corporation is to be restricted, a statement to that effect and a statement as to the nature of such restrictions;
 - (e) the number of directors or, subject to paragraph 107(a), the minimum and maximum number of directors of the corporation; and
 - (f) any restrictions on the businesses that the corporation may carry on.

Additional provision on articles

(2) The articles may set out any provisions permitted by this Act or by law to be set out in the by-laws of the corporation.

(3) Subject to subsection (4), if the articles or a unanimous shareholder agreement require a greater number of votes of directors or shareholders than that required by this Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.

(4) The articles may not require a greater number of votes of shareholders to remove a director than the number required by section 109.

7. An incorporator shall send to the Director articles of incorporation and the documents required by sections 19 and 106.

8. (1) Subject to subsection (2), on receipt of articles of incorporation, the Director shall issue a certificate of incorporation in accordance with section 262.

(2) The Director may refuse to issue the certificate if a notice that is required to be sent under subsection 19(2) or 106(1) indicates that the corporation, if it came into existence, would not be in compliance with this Act.

DIRECTORS AND OFFICERS

102. (1) Subject to any unanimous shareholder agreement, the directors shall manage, or supervise the management of, the business and affairs of a corporation.

(2) A corporation shall have one or more directors but a distributing corporation, any of the issued securities of which remain outstanding and are held by more than one person, shall have not fewer than three directors, at least two of whom are not officers or employees of the corporation or its affiliates.

105. (1) The following persons are disqualified from being a director of a corporation:

- (a) anyone who is less than eighteen years of age;
- (b) anyone who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) a person who is not an individual; or
- (d) a person who has the status of bankrupt.

(2) Unless the articles otherwise provide, a director of a corporation is not required to hold shares issued by the corporation.

(3) Subject to subsection (3.1), at least twenty-five per cent of the directors of a corporation must be resident Canadians. However, if a corporation has less than four directors, at least one director must be a resident Canadian.

(3.1) If a corporation engages in an activity in Canada in a prescribed business sector or if a corporation, by an Act of Parliament or by a regulation made under an Act of Parliament, is required, either individually or in order to engage in an activity in Canada in a particular business sector, to attain or maintain a specified level of Canadian ownership or control, or to restrict, or to comply with a restriction in relation to, the number of voting shares that any one shareholder may hold, own or control, then a majority of the directors of the corporation must be resident Canadians.

(3.2) Nothing in subsection (3.1) shall be construed as reducing any requirement for a specified number or percentage of resident Canadian directors that otherwise applies to a corporation referred to in that subsection.

(3.3) If a corporation referred to in subsection (3.1) has only one or two directors, that director or one of the two directors, as the case may be, must be a resident Canadian.

(4) Despite subsection (3.1), not more than one third of the directors of a holding corporation referred to in that subsection need be resident Canadians if the holding corporation earns in Canada directly or through its subsidiaries less than five per cent of the gross revenues of the holding corporation and all of its subsidiary bodies corporate together as shown in

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- (a) the most recent consolidated financial statements of the holding corporation referred to in section 157;
or
- (b) the most recent financial statements of the holding corporation and its subsidiary bodies corporate as at the end of the last completed financial year of the holding corporation.

109. (1) Subject to paragraph 107(g), the shareholders of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.

(2) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series.

(3) Subject to paragraphs 107(b) to (e), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled under section 111.

(4) If all of the directors have resigned or have been removed without replacement, a person who manages or supervises the management of the business and affairs of the corporation is deemed to be a director for the purposes of this Act.

(5) Subsection (4) does not apply to

- (a) an officer who manages the business or affairs of the corporation under the direction or control of a shareholder or other person;
- (b) a lawyer, notary, accountant or other professional who participates in the management of the corporation solely for the purpose of providing professional services; or
- (c) a trustee in bankruptcy, receiver, receiver-manager, sequestrator or secured creditor who participates in the management of the corporation or exercises control over its property solely for the purpose of the realization of security or the administration of a bankrupt's estate, in the case of a trustee in bankruptcy.

112. (1) The shareholders of a corporation may amend the articles to increase or, subject to paragraph 107(h), to decrease the number of directors, or the minimum or maximum number of directors, but no decrease shall shorten the term of an incumbent director.

(2) Where the shareholders at a meeting adopt an amendment to the articles of a corporation to increase or, subject to paragraph 107(h) and to subsection (1), decrease the number or minimum or maximum number of directors, the shareholders may, at the meeting, elect the number of directors authorized by the amendment, and for that purpose, notwithstanding subsections 179(1) and 262(3), on the issue of a certificate of amendment the articles are deemed to be amended as of the date the shareholders adopt the amendment.

114. (1) Unless the articles or by-laws otherwise provide, the directors may meet at any place and on such notice as the by-laws require.

(2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors, and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

(3) Directors, other than directors of a corporation referred to in subsection 105(4), shall not transact business at a meeting of directors unless,

- (a) if the corporation is subject to subsection 105(3), at least twenty-five per cent of the directors present are resident Canadians or, if the corporation has less than four directors, at least one of the directors present is a resident Canadian; or
- (b) if the corporation is subject to subsection 105(3.1), a majority of directors present are resident Canadians or if the corporation has only two directors, at least one of the directors present is a resident Canadian.

(4) Despite subsection (3), directors may transact business at a meeting of directors where the number of resident Canadian directors, required under that subsection, is not present if

- (a) a resident Canadian director who is unable to be present approves in writing, or by telephonic, electronic or other communication facility, the business transacted at the meeting; and
- (b) the required number of resident Canadian directors would have been present had that director been present at the meeting.

(5) A notice of a meeting of directors shall specify any matter referred to in subsection 115(3) that is to be dealt with at the meeting but, unless the by-laws otherwise provide, need not specify the purpose of or the business to be transacted at the meeting.

(6) A director may in any manner waive a notice of a meeting of directors; and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(7) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

(8) Where a corporation has only one director, that director may constitute a meeting.

(9) Subject to the by-laws, a director may, in accordance with the regulations, if any, and if all the directors of the corporation consent, participate in a meeting of directors or of a committee of directors by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. A director participating in such a meeting by such means is deemed for the purposes of this Act to be present at that meeting.

118. (1) Directors of a corporation who vote for or consent to a resolution authorizing the issue of a share under section 25 for a consideration other than money are jointly and severally, or solidarily, liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

(2) Directors of a corporation who vote for or consent to a resolution authorizing any of the following are jointly and severally, or solidarily, liable to restore to the corporation any amounts so distributed or paid and not otherwise recovered by the corporation:

- (a) a purchase, redemption or other acquisition of shares contrary to section 34, 35 or 36;
- (b) a commission contrary to section 41;
- (c) a payment of a dividend contrary to section 42;
- (d) a payment of an indemnity contrary to section 124; or
- (e) a payment to a shareholder contrary to section 190 or 241.

(3) A director who has satisfied a judgment rendered under this section is entitled to contribution from the other directors who voted for or consented to the unlawful act on which the judgment was founded.

(4) A director liable under subsection (2) is entitled to apply to a court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 34, 35, 36, 41, 42, 124, 190 or 241.

(5) In connection with an application under subsection (4) a court may, if it is satisfied that it is equitable to do so,

- (a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 34, 35, 36, 41, 42, 124, 190 or 241;

- (b) order a corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares; or
- (c) make any further order it thinks fit.

(6) A director who proves that the director did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the corporation would have received if the share had been issued for money is not liable under subsection (1).

(7) An action to enforce a liability imposed by this section may not be commenced after two years from the date of the resolution authorizing the action complained of.

SHAREHOLDERS

132. (1) Meetings of shareholders of a corporation shall be held at the place within Canada provided in the by-laws or, in the absence of such provision, at the place within Canada that the directors determine.

(2) Despite subsection (1), a meeting of shareholders of a corporation may be held at a place outside Canada if the place is specified in the articles or all the shareholders entitled to vote at the meeting agree that the meeting is to be held at that place.

(3) A shareholder who attends a meeting of shareholders held outside Canada is deemed to have agreed to it being held outside Canada except when the shareholder attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

(4) Unless the by-laws otherwise provide, any person entitled to attend a meeting of shareholders may participate in the meeting, in accordance with the regulations, if any, by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the corporation makes available such a communication facility. A person participating in a meeting by such means is deemed for the purposes of this Act to be present at the meeting.

(5) If the directors or the shareholders of a corporation call a meeting of shareholders pursuant to this Act, those directors or shareholders, as the case may be, may determine that the meeting shall be held, in accordance with the regulations, if any, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the by-laws so provide.

133. (1) The directors of a corporation shall call an annual meeting of shareholders

- (a) not later than eighteen months after the corporation comes into existence; and
- (b) subsequently, not later than fifteen months after holding the last preceding annual meeting but no later than six months after the end of the corporation's preceding financial year.

(2) The directors of a corporation may at any time call a special meeting of shareholders.

(3) Despite subsection (1), the corporation may apply to the court for an order extending the time for calling an annual meeting.

135. (1) Notice of the time and place of a meeting of shareholders shall be sent within the prescribed period to

- (a) each shareholder entitled to vote at the meeting;
- (b) each director; and
- (c) the auditor of the corporation.

(1.1) In the case of a corporation that is not a distributing corporation, the notice may be sent within a shorter period if so specified in the articles or by-laws.

(2) A notice of a meeting is not required to be sent to shareholders who were not registered on the records of the

corporation or its transfer agent on the record date determined under paragraph 134(1)(c) or subsection 134(2), but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

(3) If a meeting of shareholders is adjourned for less than thirty days it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than ninety days, subsection 149(1) does not apply.

(5) All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the financial statements, auditor's report, election of directors and re-appointment of the incumbent auditor, is deemed to be special business.

(6) Notice of a meeting of shareholders at which special business is to be transacted shall state

- (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and
- (b) the text of any special resolution to be submitted to the meeting.

137. (1) Subject to subsections (1.1) and (1.2), a registered holder or beneficial owner of shares that are entitled to be voted at an annual meeting of shareholders may

- (a) submit to the corporation notice of any matter that the person proposes to raise at the meeting (a "proposal"); and
- (b) discuss at the meeting any matter in respect of which the person would have been entitled to submit a proposal.

(1.1) To be eligible to submit a proposal, a person

- (a) must be, for at least the prescribed period, the registered holder or the beneficial owner of at least the prescribed number of outstanding shares of the corporation; or
- (b) must have the support of persons who, in the aggregate, and including or not including the person that submits the proposal, have been, for at least the prescribed period, the registered holders, or the beneficial owners of, at least the prescribed number of outstanding shares of the corporation.

(1.2) A proposal submitted under paragraph (1)(a) must be accompanied by the following information:

- (a) the name and address of the person and of the person's supporters, if applicable; and
- (b) the number of shares held or owned by the person and the person's supporters, if applicable, and the date the shares were acquired.

(1.3) The information provided under subsection (1.2) does not form part of the proposal or of the supporting statement referred to in subsection (3) and is not included for the purposes of the prescribed maximum word limit set out in subsection (3).

(1.4) If requested by the corporation within the prescribed period, a person who submits a proposal must provide proof, within the prescribed period, that the person meets the requirements of subsection (1.1).

(2) A corporation that solicits proxies shall set out the proposal in the management proxy circular required by section 150 or attach the proposal thereto.

(3) If so requested by the person who submits a proposal, the corporation shall include in the management proxy circular or attach to it a statement in support of the proposal by the person and the name and address of

the person. The statement and the proposal must together not exceed the prescribed maximum number of words.

(4) A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than five per cent of the shares or five per cent of the shares of a class of shares of the corporation entitled to vote at the meeting to which the proposal is to be presented, but this subsection does not preclude nominations made at a meeting of shareholders.

(5) A corporation is not required to comply with subsections (2) and (3) if

- (a) the proposal is not submitted to the corporation at least the prescribed number of days before the anniversary date of the notice of meeting that was sent to shareholders in connection with the previous annual meeting of shareholders;
- (b) it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the corporation or its directors, officers or security holders;
- (b.1) it clearly appears that the proposal does not relate in a significant way to the business or affairs of the corporation;
- (c) not more than the prescribed period before the receipt of a proposal, a person failed to present, in person or by proxy, at a meeting of shareholders, a proposal that at the person's request, had been included in a management proxy circular relating to the meeting;
- (d) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held not more than the prescribed period before the receipt of the proposal and did not receive the prescribed minimum amount of support at the meeting; or
- (e) the rights conferred by this section are being abused to secure publicity.

(5.1) If a person who submits a proposal fails to continue to hold or own the number of shares referred to in subsection (1.1) up to and including the day of the meeting, the corporation is not required to set out in the management proxy circular, or attach to it, any proposal submitted by that person for any meeting held within the prescribed period following the date of the meeting.

(6) No corporation or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this section.

(7) If a corporation refuses to include a proposal in a management proxy circular, the corporation shall, within the prescribed period after the day on which it receives the proposal or the day on which it receives the proof of ownership under subsection (1.4), as the case may be, notify in writing the person submitting the proposal of its intention to omit the proposal from the management proxy circular and of the reasons for the refusal.

(8) On the application of a person submitting a proposal who claims to be aggrieved by a corporation's refusal under subsection (7), a court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

(9) The corporation or any person claiming to be aggrieved by a proposal may apply to a court for an order permitting the corporation to omit the proposal from the management proxy circular, and the court, if it is satisfied that subsection (5) applies, may make such order as it thinks fit.

(10) An applicant under subsection (8) or (9) shall give the Director notice of the application and the Director is entitled to appear and be heard in person or by counsel.

138. (1) A corporation shall prepare an alphabetical list of its shareholders entitled to receive notice of a meeting, showing the number of shares held by each shareholder,

- (a) if a record date is fixed under paragraph 134(1)(c), not later than ten days after that date; or
- (b) if no record date is fixed, on the record date established under paragraph 134(2)(a).

(2) If a record date for voting is fixed under paragraph 134(1)(d), the corporation shall prepare, no later than ten days after the record date, an alphabetical list of shareholders entitled to vote as of the record date at a meeting of shareholders that shows the number of shares held by each shareholder.

(3) If a record date for voting is not fixed under paragraph 134(1)(d), the corporation shall prepare, no later than ten days after a record date is fixed under paragraph 134(1)(c) or no later than the record date established under paragraph 134(2)(a), as the case may be, an alphabetical list of shareholders who are entitled to vote as of the record date that shows the number of shares held by each shareholder.

(3.1) A shareholder whose name appears on a list prepared under subsection (2) or (3) is entitled to vote the shares shown opposite their name at the meeting to which the list relates.

(4) A shareholder may examine the list of shareholders

- (a) during usual business hours at the registered office of the corporation or at the place where its central securities register is maintained; and
- (b) at the meeting of shareholders for which the list was prepared.

139. (1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders, irrespective of the number of persons actually present at the meeting, if the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present at the opening of a meeting of shareholders, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

(4) If a corporation has only one shareholder, or only one holder of any class or series of shares, the shareholder present in person or by proxy constitutes a meeting.

INSIDER TRADING

126. (1) In this Part,

“business combination” means an acquisition of all or substantially all the property of one body corporate by another, or an amalgamation of two or more bodies corporate, or any similar reorganization between or among two or more bodies corporate;

“insider” means, except in section 131,

- (a) a director or officer of a distributing corporation;
- (b) a director or officer of a subsidiary of a distributing corporation;
- (c) a director or officer of a body corporate that enters into a business combination with a distributing corporation; and
- (d) a person employed or retained by a distributing corporation;

“officer” means the chairperson of the board of directors, the president, a vice-president, the secretary, the treasurer, the comptroller, the general counsel, the general manager, a managing director, of an entity, or any other individual who performs functions for an entity similar to those normally performed by an individual occupying any of those offices;

“share” means a share carrying voting rights under all circumstances or by reason of the occurrence of an event that has occurred and that is continuing, and includes

- (a) a security currently convertible into such a share, and
- (b) currently exercisable options and rights to acquire such a share or such a convertible security.

(2) For the purposes of this Part,

- (a) a director or an officer of a body corporate that beneficially owns, directly or indirectly, shares of a distributing corporation, or that exercises control or direction over shares of the distributing corporation, or that has a combination of any such ownership, control and direction, carrying more than the prescribed percentage of voting rights attached to all of the outstanding shares of the distributing corporation not including shares held by the body corporate as underwriter while those shares are in the course of a distribution to the public is deemed to be an insider of the distributing corporation;
- (b) a director or an officer of a body corporate that is a subsidiary is deemed to be an insider of its holding distributing corporation;
- (c) a person is deemed to beneficially own shares that are beneficially owned by a body corporate controlled directly or indirectly by the person;
- (d) a body corporate is deemed to own beneficially shares beneficially owned by its affiliates; and
- (e) the acquisition or disposition by an insider of an option or right to acquire a share is deemed to be a change in the beneficial ownership of the share to which the option or right to acquire relates.

130. (1) An insider shall not knowingly sell, directly or indirectly, a security of a distributing corporation or any of its affiliates if the insider selling the security does not own or has not fully paid for the security to be sold.

(2) An insider shall not knowingly, directly or indirectly, sell a call or buy a put in respect of a security of the corporation or any of its affiliates.

(3) Despite subsection (1), an insider may sell a security they do not own if they own another security convertible into the security sold or an option or right to acquire the security sold and, within ten days after the sale, they

- (a) exercise the conversion privilege, option or right and deliver the security so acquired to the purchaser; or
- (b) transfer the convertible security, option or right to the purchaser.

(4) An insider who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding the greater of one million dollars and three times the profit made, or to imprisonment for a term not exceeding six months or to both.

E. HONGKONG

Hong Kong has a significant trading economy and is a center for both multinational and local companies operating in Asia. Hong Kong companies can easily carrying out business in the Peoples Republic of China and throughout Asia. Hong Kong incorporated companies are increasingly becoming the chosen entities for conducting trading activities in Asia as they benefit from a tax friendly environment and business friendly legal system. Hong Kong Companies are guided by the **Hong Kong Companies Ordinance**.

Hong Kong Companies Ordinance is enforced by the Company Registry of Hong Kong. The primary functions of the Hong Kong Company Registry include the incorporation of local companies; the registration of oversea companies; the registration of documents required to be submitted by registered companies; the deregistration of defunct, solvent private companies; the prosecution of companies and their officers for breaches of the various regulatory provisions of the Hong Kong Companies Ordinance; the provision of facilities to inspect and

obtain company information; and advising the Government on policy and legislative issues regarding company law and related legislation, including the Overall Review of the Hong Kong Companies Ordinance.

Salient features of Hong Kong Companies Ordinance

Short Title and Commencement

- (1) This Ordinance may be cited as the Companies Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Mode of forming incorporated company

Types of companies

Only the following companies may be formed under this Ordinance –

- (a) a public company limited by shares;
- (b) a private company limited by shares;
- (c) a public unlimited company with a share capital;
- (d) a private unlimited company with a share capital;
- (e) a company limited by guarantee without a share capital.

Formation of company

- (1) Any one or more persons may form a company by –
 - (a) signing the articles of the company intended to be formed; and
 - (b) delivering to the Registrar for registration –
 - (i) an incorporation form in the specified form; and
 - (ii) a copy of the articles.
- (2) A company may only be formed for a lawful purpose.

Content of incorporation form

- (1) An incorporation form must –
 - (a) in relation to the company intended to be formed, contain the particulars and statements specified in section 1 of Schedule 2;
 - (b) in relation to each founder member of the company, contain the particulars specified in section 2 of Schedule 2;
 - (c) in relation to each person who is to be a director of the company on the company's formation, contain –
 - (i) the particulars specified in section 3 of Schedule 2; and
 - (ii) the statement specified in section 4 of Schedule 2;
 - (d) in relation to each person who is to be the company secretary, or one of the joint company secretaries, of the company on that formation, contain the particulars specified in section 5 of Schedule 2;
 - (e) contain the statements specified in section 7 of Schedule 2; and
 - (f) contain the statement of compliance specified in section 70(1).
- (2) If the company intended to be formed is a company limited by shares or an unlimited company, the incorporation form must also contain the statement specified in section 8 of Schedule 2.

Signing of incorporation form

An incorporation form must be signed by the founder member named in the form or, if 2 or more founder members are named, by any one of those members.

Issue of certificate of incorporation on registration

(1) On registering an incorporation form and a copy of the articles delivered under section 67(1)(b), the Registrar must issue a certificate of incorporation certifying that the company—

(a) is incorporated under this Ordinance; and (b) is a limited company or an unlimited company.

(2) A certificate of incorporation must be signed by the Registrar.

Conclusiveness of certificate of incorporation

A certificate of incorporation is conclusive evidence that-

(a) all the requirements of this Ordinance in respect of the registration of the company have been complied with; and

(b) the company is registered under this Ordinance.

Effect of incorporation

(1) On and after the date of incorporation stated in the certificate of incorporation, the founder members, and any other persons who may from time to time become the company's members, are a body corporate with the name stated in the certificate or, if a change of name has effect under section 107, 110, 770 or 772, with the new name.

(2) On and after the date of incorporation, the body corporate is capable of exercising all the functions of an incorporated company, and has perpetual succession.

(3) On and after the date of incorporation, the founder members, and any other persons who may from time to time become the company's members, are liable to contribute to the assets of the company in the event of the company being wound up as is mentioned in the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

Share Capital

Nature of Shares

Nature and transferability of shares

(1) A share or other interest of a member in a company is personal property.

(2) A share or other interest of a member in a company is transferable in accordance with the company's articles.

No nominal value

(1) Shares in a company have no nominal value.

(2) This section applies to shares issued before the commencement date of this section as well as shares issued on or after that date.

Allotment and Issue of Shares

Exercise by directors of power to allot shares or grant rights

(1) Except in accordance with section 141, the directors of a company must not exercise any power— (a) to allot shares in the company; or (b) to grant rights to subscribe for, or to convert any security into, shares in the company.

(2) Subsection (1) does not apply to— (a) an allotment of shares, or grant of rights, under an offer made to the members of the company in proportion to their shareholdings; (b) an allotment of shares, or grant of rights, on a bonus issue of shares to the members of the company in proportion to their shareholdings; (c) an allotment to a founder member of a company of shares that the member, by signing the company's articles, has agreed to take; or (d) an allotment of shares made in accordance with a grant of a right to subscribe for, or to convert any security into, shares if the right was granted in accordance with an approval under section 141.

(3) For the purposes of subsection (2)(a), the offer is not required to be made to any member whose address is in a place where the offer is not permitted under the law of that place.

(4) A director commits an offence if the director knowingly contravenes, or authorizes or permits a contravention of, this section.

(5) A director who commits an offence under subsection (4) is liable to a fine at level 5 and to imprisonment for 6 months.

(6) Nothing in this section or section 141 affects the validity of an allotment or other transaction.

Registration of allotment

(1) A company must register an allotment of shares as soon as practicable and in any event within 2 months after the date of the allotment, by entering in the register of its members the information referred to in section 627(2) and (3).

(2) If a company fails to register an allotment of shares within 2 months after the date of the allotment, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Transfer and Transmission of Shares

Transfer of Shares

Requirement for instrument of transfer

(1) A company must not register a transfer of shares in the company unless a proper instrument of transfer has been delivered to the company.

(2) Subsection (1) does not affect any power of a company to register as a member a person to whom the right to shares has been transmitted by operation of law.

Registration of transfer or refusal of registration

(1) The transferee or transferor of shares in a company may lodge the transfer with the company.

(2) Within 2 months after the transfer is lodged, the company must either— (a) register the transfer; or (b) send the transferee and the transferor notice of refusal to register the transfer.

(3) If a company refuses registration, the transferee or transferor may request a statement of the reasons for the refusal.

(4) If a request is made under subsection (3), the company must, within 28 days after receiving the request— (a) send the person who made the request a statement of the reasons; or (b) register the transfer.

(5) If a company contravenes subsection (2) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Registration or refusal of registration

(1) This section applies if the right to shares is transmitted to a person by operation of law and the person notifies the company in writing that the person wishes to be registered as a member of the company in respect of the shares.

(2) Within 2 months after receiving the notification, the company must either— (a) register the person as a member of the company in respect of the shares; or (b) send the person notice of refusal of registration.

(3) If a company refuses registration, the person may request a statement of the reasons for the refusal

(4) If a person makes a request under subsection (3), the company must, within 28 days after receiving the request— (a) send the person a statement of the reasons; or (b) register the person as a member of the company in respect of the shares.

(5) If a company contravenes subsection (2) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues

Permitted alteration of share capital

(1) A limited company may alter its share capital in any one or more of the ways set out in subsection (2).

(2) The company may –

- (a) increase its share capital by allotting and issuing new shares in accordance with this Part;
- (b) increase its share capital without allotting and issuing new shares, if the funds or other assets for the increase are provided by the members of the company;
- (c) capitalize its profits, with or without allotting and issuing new shares;
- (d) allot and issue bonus shares with or without increasing its share capital;
- (e) convert all or any of its shares into a larger or smaller number of shares;
- (f) cancel shares— (i) that, at the date the resolution for cancellation is passed, have not been taken or agreed to be taken by any person; or (ii) that have been forfeited.

(2) A limited company may alter its share capital as referred to in subsection (2)(e) or (f) only by resolution of the company.

(3) A limited company may alter its share capital as referred to in subsection (2)(e) or (f) only by resolution of the company.

(4) A resolution referred to in subsection (3) may authorize the company to exercise the power— (a) on more than one occasion; (b) at a specified time or in specified circumstances.

(5) Any amount remaining unpaid on shares being converted under subsection (2)(e) is to be divided equally among the replacement shares.

(6) If shares are cancelled under subsection (2)(f), the company must reduce its share capital by the amount of the shares cancelled.

(7) For the purposes of Part 5, a cancellation of shares under this section is not a reduction of share capital.

(8) A limited company's articles may exclude or restrict the exercise of a power conferred by this section.

Directors and Company Secretaries

Requirement to have Directors -Public company and company limited by guarantee required to have at least 2 directors :

- (1) This section applies to – (a) a public company; and (b) a company limited by guarantee.
- (2) The company must have at least 2 directors.
- (3) With effect from the date of incorporation of the company, the first directors of the company are the persons named as the directors in the incorporation form delivered to the Registrar under section 67(1).
- (4) A person who is deemed to be a director of the company under section 153(2) of the pre-amended predecessor Ordinance immediately before the commencement date of this section continues to be deemed to be a director of the company as if section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is delivered to the Registrar in accordance with section 645(1).
- (5) If a power specified in subsection (6) is exercisable by a director under the company's articles where the number of directors is reduced below the number fixed as the necessary quorum of directors, the power is exercisable also where the number of directors is reduced below the number required by subsection (2).
- (6) The power specified for the purposes of subsection (5) is a power to act for the purpose of— (a) increasing the number of directors; or (b) calling a general meeting of the company, but not for any other purpose.

Private company required to have at least one director

- (1) A private company must have at least one director.
- (2) With effect from the date of incorporation of a private company, the first directors of the company are the persons named as the directors in the incorporation form delivered to the Registrar under section 67(1).
- (3) A person who is deemed to be a director of a private company under section 153A(2) of the pre-amended predecessor Ordinance immediately before the commencement date of this section continues to be deemed to be a director of the company as if section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is delivered to the Registrar in accordance with section 645(1).

Appointment of Directors-Minimum age for appointment as director:

- (1) A person must not be appointed a director of a company unless at the time of appointment the person has attained the age of 18 years.
- (2) An appointment made in contravention of subsection (1) is void.
- (3) Nothing in this section affects any liability of a person under any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) if the person – (a) purports to act as a director; or (b) acts as a shadow director, although the person could not, by virtue of this section, be appointed as a director.

Appointment of directors to be voted on individually :

- (1) This section applies to – (a) a public company; and (b) a company limited by guarantee.
- (2) At a general meeting of the company, a motion for the appointment of 2 or more persons as directors of the company by a single resolution must not be made, unless a resolution that it may be so made has first been passed at the meeting without any vote against it.
- (3) A resolution moved in contravention of subsection (2) is void, whether or not its being so moved was objected to at the time.
- (4) Despite the fact that the resolution is void, no provision (whether contained in a company's articles or in any contract with the company or otherwise) for the automatic reappointment of retiring directors in default of another appointment applies.

(5) For the purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, is to be regarded as a motion for the appointment of the person.

Removal and Resignation of Directors -Resolution to remove director

(1) A company may by an ordinary resolution passed at a general meeting remove a director before the end of the director's term of office, despite anything in its articles or in any agreement between it and the director.

(2) Subsection (1) does not, if the company is a private company, authorize the removal of a director who has held office for life since 31 August 1984.

(3) Subsections (4), (5), (6), (7) and (8) apply in relation to a removal of a director by resolution, irrespective of whether the removal by resolution is under subsection (1) or otherwise.

(4) Special notice is required of a resolution – (a) to remove a director; or (b) to appoint somebody in place of a director so removed at the meeting at which the director is removed.

(5) A vacancy created by the removal of a director, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.

(6) A person appointed director in place of a removed director is to be regarded, for the purpose of determining the time at which that person or any other director is to retire, as if that person had become director on the day on which the person removed was last appointed a director.

(7) In relation to a resolution to remove a director before the end of the director's term of office, no share may, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.

(8) If a share carries special voting rights (that is to say, rights different from those carried by other shares) in relation to some matters but not others, the reference in subsection (7) to the generality of matters to be voted on at a general meeting of the company is to be construed as a reference to the matters in relation to which the share carries no special voting right.

(9) This section is not to be regarded as depriving a person of compensation or damages payable to the person in respect of the termination of – (a) the person's appointment as director; or (b) any appointment terminating with that as director.

Resignation of director

(1) A director of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as director at any time.

(2) If a director of a company resigns, the company must deliver a notice of the resignation to the Registrar in the manner required by section 645(4).

(3) Despite subsection (2), if the director resigning has reasonable grounds for believing that the company will not deliver the notice, the director resigning must deliver to the Registrar for registration a notice of the resignation in the specified form.

(4) The notice required to be delivered under subsection (3) must state – (a) whether the director resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and (b) if notice is so required, whether the notice has been given in accordance with the requirement.

(5) If notice of the resignation of a director of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the director gives notice in writing of the resignation –

- (a) in accordance with the requirement;

- (b) by leaving it at the registered office of the company; or
- (c) by sending it to the company in hard copy form or in electronic form.

Appointment of Auditor

Eligibility for appointment

- (1) Only a practice unit is eligible for appointment as auditor of a company under this Subdivision.
- (2) The following are disqualified for appointment as auditor of a company under this Subdivision –
 - (a) a person who is an officer or employee of the company;
 - (b) a person who is a partner or employee of a person mentioned in paragraph (a);
 - (c) a person who – (i) is, by virtue of paragraph (a) or (b), disqualified for appointment as auditor of any other undertaking that is a subsidiary undertaking, or a parent undertaking, of the company or is a subsidiary undertaking of that parent undertaking; or (ii) would be so disqualified if the undertaking were a company.
- (3) In this section, a reference to an officer or employee of a company excludes an auditor of the company

Auditor must be appointed for each financial year

- (1) An auditor must be appointed for each financial year of a company.
- (2) An auditor may be appointed only under this Subdivision.

Removal of Auditor

When appointment is terminated

- (1) A person's appointment as auditor of a company is terminated if –
 - (a) the term of office expires;
 - (b) the person resigns from office under section 417(1);
 - (c) the person ceases to be auditor under section 418;
 - (d) the person is removed from office under section 419(1); or
 - (e) a winding up order is made in respect of the company.
- (2) Where a firm is appointed, by the firm name, as auditor of a company, the appointment is also terminated if every person who is regarded as being appointed as auditor by virtue of section 399—
 - (a) ceases to be a partner in the firm before the term of office expires; or
 - (b) ceases to be eligible, or becomes disqualified, for appointment as auditor of the company under Subdivision 2 before the term of office expires.
- (3) Where a body corporate is appointed as auditor of a company, the appointment is also terminated if the body corporate is dissolved.
- (4) If 2 or more persons are appointed as auditor of a company, and the appointment of any of the persons is terminated, the termination does not affect the appointment of the other person.

Resignation of auditor

- (1) A person may resign from the office of auditor by giving the company a notice in writing that is accompanied by a statement required to be given under section 424.

(2) Such a person's term of office expires –

- (a) at the end of the day on which notice is given to the company under subsection (1); or
- (b) if the notice specifies a time on a later day for the purpose, at that time.

(3) Within 15 days beginning on the date on which a company receives a notice of resignation, the company must deliver a notification in the specified form of that fact to the Registrar for registration.

(4) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

F. SINGAPORE

The Companies Act of Singapore was first enacted in 1967. It has been subjected to numerous piecemeal amending legislations effected from time to time. In view of technological advancements, globalisation and the regional economies undergoing massive changes, the Government saw that a major revamp of the Companies Act was due.

Hence, the Company Legislation and Regulatory Framework Committee (CLRFC) was formed in December 1999. It was asked to modernise Singapore's company and business regulatory framework and to recommend one which will promote a competitive economy.

The Committee delivered its final report in early October 2002 and all its 77 recommendations were accepted by the Government. Since then the Singapore Companies Act has been amended three times to give effect to the recommendations of the CLRFC, the major being Amendment Acts of 2004 and 2005.

Salient Features of Singapore Companies Act

Formation of companies

Any person may, whether alone or together with another person, by subscribing his name or their names to a memorandum and complying with the requirements as to registration, form an incorporated company.

A company may be –

- (a) a company limited by shares;
- (b) a company limited by guarantee; or
- (c) an unlimited company.

Any company, association or partnership consisting of more than 20 persons cannot be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other written law in Singapore or letters patent.

Minimum of one member

A company must have at least one member.

No par value shares

All shares, whether issued before, on or after 30th January 2006 have no par value. The concept of 'authorised capital' is also abolished.

Division 7A of the Act deals with The Central Depository System – a book entry or scripless system for the transfer of securities.

Treasury shares (76H)

Where ordinary shares or stocks are purchased or otherwise acquired by a company in accordance with the provisions of the Act, the company may –

- (a) hold the shares or stocks (or any of them); or
- (b) deal with any of them, at any time, as provided hereunder.

Where shares are held as treasury shares, a company may at any time –

- (a) sell the shares (or any of them) for cash;
- (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme;
- (c) transfer the shares (or any of them) as consideration for the acquisition of shares in or assets of another company or assets of a person;
- (d) cancel the shares (or any of them); or
- (e) sell, transfer or otherwise use the treasury shares for such other purposes as the Minister may by order prescribe.

Treasury shares: maximum holdings (Section 76I.)

This section shall apply to shares which are held by a company as treasury shares. Where a company has shares of only one class, the aggregate number of shares held as treasury shares shall not at any time exceed 10% of the total number of shares of the company at that time.

Where the share capital of a company is divided into shares of different classes, the aggregate number of the shares of any class held as treasury shares shall not at any time exceed 10% of the total number of the shares in that class at that time.

Treasury shares: voting and other rights (Section 76J.)

The company shall not exercise any right in respect of the treasury shares and any purported exercise of such a right is void.

The above said right include any right to attend or vote at meetings and for the purposes of this Act, the company shall be treated as having no right to vote and the treasury shares shall be treated as having no voting rights.

No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.

Nothing in this section is to be taken as preventing –

- (a) an allotment of shares as fully paid bonus shares in respect of the treasury shares; or
- (b) the subdivision or consolidation of any treasury share into treasury shares of a smaller amount, if the total value of the treasury shares after the subdivision or consolidation is the same as the total value of the treasury share before the subdivision or consolidation, as the case may be.

Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purpose of this act as if they were proceeded by the company at the time they were allotted, in circumstances in which section 764 applied.

Company may have duplicate common seal

A company may, if authorised by its articles, have a duplicate common seal which shall be a facsimile of the common seal of the company with the addition on its face of the words "Share Seal" and a certificate under such duplicate seal shall be deemed to be sealed with the common seal of the company for the purposes of this Act.

Power to entrench provisions of memorandum and articles of company

- (1) An entrenching provision may –
- (a) be included in the memorandum or articles with which a company is formed; and
 - (b) at any time be inserted in the memorandum or articles of a company only if all the members of the company agree.
- (2) An entrenching provision may be removed or altered only if all the members of the company agree.
- (3) The provisions of this Act relating to the alteration of the memorandum or articles of a company are subject to any entrenching provision in the memorandum or articles of a company.
- (4) In this section, “entrenching provision” means a provision of the memorandum or articles of a company to the effect that other specified provisions of the memorandum or articles –
- (a) may not be altered in the manner provided by this Act; or
 - (b) may not be so altered except –
 - (i) by a resolution passed by a specified majority greater than 75% (the minimum majority required by this Act for a special resolution); or
 - (ii) where other specified conditions are met.

Company auditors

A person shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an auditor of the company –

- (a) if he is not a public accountant;
- (b) if he is indebted to the company or to a corporation that is deemed to be related to that company by virtue of section 6 in an amount exceeding \$2,500;
- (c) if he is –
 - (i) an officer of the company;
 - (ii) a partner, employer or employee of an officer of the company; or
 - (iii) a partner or employee of an employee of an officer of the company; or
- (d) if he is responsible for or if he is the partner, employer or employee of a person responsible for the keeping of the register of members or the register of holders of debentures of the company.

An accounting firm shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an auditor of the company if any partner of the firm (whether or not he is a public accountant) is a person described in (b), (c) or (d).

An accounting corporation shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an auditor of the company if –

- (a) any director of the corporation (whether or not he is a public accountant); or
- (b) any employee of the corporation, who is a public accountant and practising as such in that corporation, is a person described in sub-section(b), (c) or (d).

Directors

- Every company must have at least one director who is ordinarily resident in Singapore. And, where the company has only one member, that sole director may also be the sole member of the company.
- No person other than a natural person who has attained the age of 18 years & who is otherwise of full legal capacity shall be a director of a company.

As to the duty and liability of officers (Section 157)

A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office. An officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.

Powers of directors (Section 157A)

The business of a company shall be managed by or under the direction of the directors. The directors may exercise all the powers of a company except any power that this Act or the memorandum and articles of the company require the company to exercise in general meeting.

Secretary

Every company shall have one or more secretaries each of whom shall be a natural person who has his principal or only place of residence in Singapore. In case of companies having one director and one member, the director and the company secretary cannot be the same person.

It shall be the duty of the directors of a company to take all reasonable steps to secure that each secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company.

In addition, it shall be the duty of the directors of a public company to take all reasonable steps to secure that each secretary of the company is a person who –

- on 15 May 1987 held the office of secretary in that company and continued to hold that office on 15 May 2003; or
- satisfies such requirements relating to experience, professional and academic requirements and membership of professional associations, as may be prescribed.

The Registrar may require a private company to appoint a person who satisfies either of above as its secretary if he is satisfied that the company has failed to comply with any provision of this Act with respect to the keeping of any register or other record.

Any person who is appointed by the directors of a company as a secretary shall, at the time of his appointment, by himself or through a prescribed person authorised by him, file with the Registrar a declaration in the prescribed form that he consents to act as secretary and providing the prescribed particulars.

Where a director is the sole director of a company, he shall not act or be appointed as the secretary of the company.

Annual general meeting (Section 175)

A general meeting of every company to be called the “annual general meeting” shall in addition to any other meeting be held once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) notwithstanding subsection(1), the registrar may extend the period of 15 months or 18 months referred to in that subsection, notwithstanding that the period is so extended beyond the calendar year –

- (a) upon an application by the company, if the registrar thinks there are special reasons to do so; or
- (b) in respect of any class of companies.

A private company may, by resolution passed by all of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at the meeting, dispense with the holding of annual general meetings.

Audit Committees (Section 201B)

Every listed company shall have an audit committee.

An audit committee shall be appointed by the directors from among their number (pursuant to a resolution of the board of directors) and shall be composed of 3 or more members of whom a majority shall not be –

- (a) executive directors of the company or any related corporation;
- (b) a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation; or
- (c) any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

The members of an audit committee shall elect a chairman from among their number who is not an executive director or employee of the company or any related corporation.

The functions of an audit committee shall be –

(a) to review –

- (i) with the auditor, the audit plan;
- (ii) with the auditor, his evaluation of the system of internal accounting controls;
- (iii) with the auditor, his audit report;
- (iv) the assistance given by the company's officers to the auditor;
- (v) the scope and results of the internal audit procedures; and
- (vi) the financial statements of the company and, if it is a parent company, the consolidated financial statements, submitted to it by the company or the parent company, and thereafter to submit them to the directors of the company or parent company; and

(b) to nominate a person or persons as auditor, together with such other functions as may be agreed to by the audit committee and the board of directors.

Upon the request of the auditor, the chairman of the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or shareholders.

Where the directors of the company or of a parent company are required to make a statement and the company is a listed company, the directors shall describe in the statement the nature and extent of the functions performed by the audit committee.

LESSON ROUND-UP

- It is increasingly being recognized that the framework for regulation of corporate entities must facilitate companies to operate in a national and global context, encourage good corporate governance and enable protection of interests of investors, employees, creditors as well as boost economy as a whole. In the competitive and technology driven business environment, while corporates require greater autonomy of operation and opportunity for self-regulation with optimum compliance costs, there also is a need to bring about transparency through better disclosures and greater responsibility on the part of corporates and managements for improved compliance.
- In recognition of the fact that the primary purpose of any law is to facilitate the public and bearing in mind the current international style of legal drafting, an ideal law for the corporate sector should be clear, concise and comprehensible. It is desirable that the law is a “core company law” i.e. regulating the “entity” (irrespective of its corporate structure and size) rather than its “activity” and providing the basic principles governing all aspects of the operation of corporate entities within a single, comprehensive framework.
- It is in this context that countries across the world are modernizing and harmonizing their company law with global standards.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation).

1. Define multinational and transnational company.
2. The extension of corporate activity beyond the frontiers of the country has given rise to complex problems. Discuss.
3. Discuss the essential ingredients of a good system of company law.
4. The ultimate control of the company lies with the majority of shareholders. Discuss.
5. Discuss, in brief, distinguishing features of company law in United Kingdom.
6. Discuss the requirements relating to audit of financial statements in United States of America.
7. Enumerate brief provisions regarding formation of companies under the Singapore Companies Act.

SUGGESTED READINGS:

- (1) *Farrar's Company Law – J.H. Farrar and B.M. Hannigan*
- (2) *Law of Corporations – Harry G. Henn*
- (3) *Pennington's Company Law – Butterworths*
- (4) *Palmer's Company Law*
- (5) *Company Law of Canada – Fraser & Stewart*

Lesson 19

Trusts and Non Profit Organisation

LESSON OUTLINE

- Introduction
- Advantages of Registration
- Trusts
- Classification of Trusts
- Registration of Trusts

- Extinction of a Trust
- Revocation of a Trust
- Procedure for registration of Societies
- Rules, regulations and bye laws of societies
- Working and management of societies
- Dissolution of societies
- Non profit organisations under section 8
- Privileges and exemptions of non profit organizations
- Role of Company Secretary
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The Constitution of India explicitly recognizes a number of rights to freedom. Article 19(1)(c) right “to freedom to form associations or unions” ‘Societies’ is a subject under the State list (Entry 32), whereas ‘Trust’ is in the Concurrent list (Entry 10). “Charities and charitable institutions” are also covered under the concurrent list (Entry 28) of the Seventh Schedule of the Constitution. Various legal provisions pertaining to Societies and Trusts are covered in this lesson.

Trust derived its origin and strength from the aforesaid Article of the Constitution. Non-Profit / Voluntary Organisations in our country operate on a wide variety of issues covering almost all aspects of socio-economic development and polity. There are separate laws under which Societies, Trusts, charitable institutions, Non-Profit Organisations etc. operate.

Further section 8 of the Companies Act, 2013 provides for grant of license by the Central Government for formation of ‘non-profit companies’ with charitable objects.

In India, there are enabling legal provisions which permit any group wanting to commence a non-profit, voluntary or charitable work to organize themselves into a legal entity by registering themselves under a specified Act. From the date of registration they are treated as a legal entity, the organisation acquires legal status to sue and/or be sued as a separate and distinct “person” but with no physical existence.

INTRODUCTION AND ROLE OF NGOS IN NATIONAL DEVELOPMENT

NGOs : Legal environment

NGOs are difficult to define, and the term 'NGO' is not always used consistently. In some countries the term NGO is applied to an organization that in another country would be called an NPO, and vice-versa. The distinctive features are that the activities are funded by various sources such as grants, donations and offerings, interest, dividend, membership subscription and so on. The Profits earned by NPOs utilized for augmenting the growth of society and for the benefit of the public. All the earnings of NPOs "reinvested" in furtherance of its objectives. There is Proximity to the areas of concern, understanding local environment, self-motivated players, flexibility in operation/decision making etc.

The Planning Commission of India, in a Report (Proceedings of the All India Conference on the Role of Voluntary Sector 2002) observed that "On the one hand, the State has been shrinking in its functions and resources and is unable to meet the growing social welfare and developmental challenges. On the other, the profit motivated private enterprises though expanding rapidly, however, is little concerned with the social and developmental considerations and rural development, so vital to the third world countries such as India. Therefore, neither the State led nor the market-led model of development is adequate in achieving the developmental goals. The role of the non-profit /voluntary sector i.e third sector thus assumes special significance and it is widely recognized nationally."

According to the first official survey conducted on this sector by the Ministry of Statistics and Programme Implementation (March 2012):

- Societies registered after 2000: 11.35 lakh (excludes the thousands unregistered entities);
- economic value is estimated at Rs. 41,292 crores;
- amount of foreign funds received: 10334 crore rupees(2010)
- The Kelkar Committee on Taxation pegs this sector's contribution at 2.5% of the GDP.
- Its work force is close to 182 lakhs out of which 27 lakhs are paid workers.

These numbers put this sector as one of the prominent and emerging sectors in the Indian economy.

Across the world, the number of internationally operating NGOs is around 40,000. The number of NGOs in the United States is estimated at 1.5 million. Russia has 277,000 NGOs. India is estimated to have had around 2 million NGOs in 2009.

India has a set of statutory laws governing various types of registration/incorporation of Non-profit organizations. Non-profit organizations in India may be registered/ incorporated under any of the following main laws. They are as under:

- The Indian Trusts Act, 1882
- The Societies Registration Act, 1860
- Section 8 of the Indian Companies Act, 2013
- Public Charitable Trust Act(s) of various States
- The Co-operative Societies Act, 1912

The Societies Registration Act, 1860; the Indian Trusts Act, 1882; and Section 8 of the Indian Companies Act, 2013 are the three enactments which seem to fulfil requirements of non-profit organizations created for the larger public good.

Advantages of Registration

Some of the advantages of registration are as follows:

- Registration gives legal rights to the members to hold property in a common name.
- It enables the non-profit organization to open bank account(s) against its registered identity.
- The legal entity can sue and be sued in its own name.
- Get benefits of tax-exemptions, and other benefits
- Registration under the Foreign Contribution Regulation Act (FCRA), 2010 and Income Tax Act, 1961, is more easily granted if the non-profit organization is registered and incorporated.
- Affords recognition to the non-profit organization at all forums and before all authorities.

TRUSTS

Trust is a special form of organisation. The first law on Trusts came into force in India in 1882 known as the Indian Trusts Act, 1882. Trusts may be divided into *public* and *private*. The former is constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. Unlike private trusts, they are of a permanent and indefinite character and not confined to any certain limits prescribed in a settlement.

Definition of Trust

Section 3 of the Indian Trust Act, 1882 defines the term 'trust' as (i) an obligation annexed to the ownership of property and (ii) arising out of confidence reposed in and (iii) accepted by the owner or declared and accepted by him, (iv) for the benefit of another or of another and the owner.

The person who reposes or declares the confidence is called the 'author of the trust', the person who accepts the confidence is called the 'trustee', the person for whose benefit the confidence is accepted is called the 'beneficiary'; the subject matter of the trust is called 'trust property' or 'trusts money'; the 'beneficial interest' is beneficiary's right against the trustee as owner of the trust property; and the instrument declaring the trust is called the 'instrument of trust'.

The word 'trust' in its legal sense has a technical and definite meaning which is very much different from the sense in which this word is used in daily parlance. Trust connotes a legal concept or relationship similarly as other relationships created by law, e.g., Contract, Agency.

CLASSIFICATION OF TRUSTS

Trusts are divisible into several classes according to the mode of their creation. Some of the important classes are as follows:

Simple and Special Trusts

Where the trustee is merely to hold the estate without having any active duties to perform, it is called a simple trust. Where, however, the trust has been created for a particular object or purpose, there is a special trust. Thus, in a simple trust, the trustee is merely to hold the property for the benefit of the beneficiary and in a special trust, the trustee has duties to perform.

Oral and Written Trusts

A trust may be declared either orally or through an instrument in writing. However, a trust in relation of movable property can be declared orally by transferring the possession of the property with a direction that

the property be held in trust. In regard to a private trust for immovable properties, a written trust deed is pre-requisite.

Charitable or Religious Trust

In order to determine whether a deed of trust is a valid public or charitable trust, it is necessary to see what is the dominant intention of the testator, namely, who are the real objects of his bequest and secondly whether the class indicated as the object of charity forms at least a section of the public. Where the main and paramount intention of the settler was to benefit the members of his family and thereafter the members of his caste who might need assistance from such funds, there could be no public or charitable trust created.

It is one of the cardinal rules governing execution of charitable trusts that the intention of the donor must be observed. This principle has been evolved as an auxiliary to this rule and is never allowed to defeat it. If the charity can be administered according to the directions of the founder, the law requires that it should be so administered. The Courts will not allow any departure from them on the grounds of expediency.

Express and Implied Trusts

Express trusts are created by the act of parties either in words or in writing, while an implied trust is one which is deduced from the conduct of the parties and the circumstances of the transactions.

Public and Private Trusts

The criterion for deciding whether a particular trust is or is not of a private nature, is whether the said trust is or is not for the benefit of individuals. Where the intention of the founder, as shown by the recitals in his Will, was that the property was to be dedicated for the benefit of idols, the trust is undoubtedly of a public nature and not for the benefit of the individual members of his family.

The essential difference between a private and a public trust is that in the former, the beneficiaries are definite and ascertained individuals or individuals who within definite time can be definitely ascertained, but in the latter, the beneficial interest must be vested in an uncertain and fluctuating body of persons either the public at large or some considerable portion of it answering a particular description.

Revocable and Irrevocable Trusts

A revocable trust is one which is revocable when it is created by a non-testamentary instrument or orally and a power of revocation has been expressly reserved by the settler. A trust may be revoked by the consent of all the beneficiaries who are competent to contract.

All other trusts are irrevocable. Besides if a trust is created for charitable or religious purposes, such a trust cannot be revoked.

Public-cum-Private Trust

A Public-cum-Private Trust is one in which a religious trust is created for the immovable property like a Temple, Durgah etc. in the nature of a public trust but there is a direction for use of income through offerings or otherwise for public purposes and also a part thereof to person(s) in charge of the Temple, Durgah etc. A public-cum-private trust may become a fully public trust when the private beneficiary(ies) renounces his/their rights to which they are entitled.

Constructive Trust

A constructive trust is one which is not created by the express or implied act of the settler, but which is deemed by operation of law or arises by construction of law. A constructive trust is a relationship with respect to a property subjecting the person by whom the title to the property is held by an equitable duty to convey it to

another on the ground that his acquisition or retention of the property would be wrongful and that he would be unjustly enriched if he were permitted to retain the property.

Resulting Trust

A resulting trust is one, which is implied in favour of the settler or his representative. It comes into existence where the property is incompletely conveyed or where on a conveyance, the beneficial interest in the property is not completely disposed of and the property or the undisposed beneficial interest in it reverts back to the settler.

Executed and Executory Trust

An executed trust is one in which the limitation of the estate and the beneficiaries are prescribed by the settler in the trust deed itself and no further instrument is required.

An executory trust is not complete in itself and its execution is left to the judgement of the trustees. Here, the settler instead of expressing exactly what he means, tells the trustees to do their best to carry out his intentions.

Procedure of Registration of a Trust

The application for registration of a trust shall contain the following particulars:

- Particulars of documents creating the trust;
- Particulars other than documents about creation;
- Objects of the trust;
- Sources of income of the trust;
- Particulars of encumbrances, if any, on trust property;
- Particulars of the scheme, if any, relating to the trust;
- Particulars of title deeds pertaining to trust's property
- The name and addresses of the Trustees and managers;

Extinction of a Trust

A trust is extinguished:

- (a) When its purpose is completely fulfilled; or
- (b) When its purpose becomes unlawful; or
- (c) When the fulfillment of its purpose becomes impossible by destruction of the trust property or otherwise;
or
- (d) When the trust being revocable, is revoked.

Revocation of a Trust

If a trust is created by a Will, it may be revoked by the revocation of the Will. A trust which has been created otherwise, by an instrument other than a Will or orally, can be revoked only:

- (a) with the consent of all the beneficiaries competent to contract;
- (b) by the exercise of power of revocation expressly reserved by the author of the trust (in cases of trusts declared orally or by non-testamentary instruments); or
- (c) where the trust is created for the payment of debts of the author of the trust, and has not been communicated to the creditors, at the pleasure of the author of the trust.

A trust is generally irrevocable unless a power of revocation is expressly reserved.

SOCIETIES

The preamble of the Societies Registration Act, 1860 states that it is *an Act for the registration of literary, scientific and charitable societies.*

Whereas it is expedient the provision should be made for improving the legal condition or societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education, or for charitable purposes.

The Societies Registration Act of 1860 is an all India Act but many States, while applying the Act to themselves have enacted their own Societies Registration Act. Hence, a Society can be registered either under the central Act or the respective State Act.

Registration

A society can be registered by minimum of seven individuals which may include foreigners, or registered society for the promotion of literature, science or fine arts or diffusion of useful knowledge and political education or charitable purposes, as specified in Section 20 of the main Act as under:-

- (i) Grant of charitable assistance.
- (ii) Creation of military orphan funds.
- (iii) Societies established at the several Presidencies of India.
- (iv) Promotion of –
 - Science
 - Literature
 - Fine Arts
 - Instructions or diffusion of useful knowledge
 - Diffusion of political education
 - Foundation or maintenance of libraries or reading rooms for general use among the members or open to the public
 - Public museums and galleries of paintings & other works of art
 - Collections of natural history
 - Mechanical and philosophical inventions
 - Instruments
 - Designs

Various States have added other objects like social welfare, sports & games, environment, compassion of living creatures, recreation, athletics, cultural activities, research work, welfare of physically handicapped etc.

Points to be kept in mind while forming a society

(1) The Emblems and Names (Prevention of Imporper Use) Act, 1950 prohibits the use of any name, emblems, official seal etc. as specified in the Act without previous permission of competent authority. It also prohibits the use of the name of national heroes and other names etc. mentioned in the Act. The Societies intending to seek registration are advised to consult this Act also before proposing the name etc. for registration.

(2) If the proposed name is identical with that name by which any other society has been registered or resembles such name which is likely to deceive the public or the member of society, such name may be avoided.

Procedure for Registration

The following documents are required to be filed with the Registrar of Societies for registration of a society under the main Act or corresponding Acts of various State Governments:-

1. Covering letter requesting for registration stating various documents annexed to it addressed to the registering authority and signed by all the subscribers to the Memorandum or by a person authorised by all of them.
2. Memorandum of Association (in duplicate) containing (a) name of the society; (b) the objects of the society; (c) the names, addresses and occupation of the members of the governing body; (d) the place of registered office of the Society, and (e) the names, addresses and full signatures of the seven or more persons subscribing their names to the memorandum of Association. Their signatures should be witnessed and attested.
3. Rules & Regulations/Bye-laws (in duplicate) duly signed and certified to be a correct copy by atleast three members of the governing body.
4. Affidavit on non-judicial stamp paper of requisite value by the President or secretary of the society duly attested by Oath Commissioner or Notary Public or Magistrate of first class.
5. Documentary proof such as rent receipt or property tax receipt in respect of the Registered office of the Society or no-objection of the owner of the premises.
6. Registration fee in cash or by demand draft.

The formalities and requirements may differ from State to State. Hence, it is advised that the applicant should contact the registering authority of the State in advance besides being conversant with the respective State Act and the Rules framed thereunder.

The Registering authority shall satisfy itself about the compliance of the provisions of the Act and correctness of the documents and only thereafter certify under its hand that the Society is registered under the main Act or the corresponding Act of the State. On registration, the society becomes a legal entity or a judicial person.

Rules & Regulations

The Rules & Regulations help and guide the members and management of the society in carrying out its objects. They also bind members of the society. The Rules that are inconsistent with the provisions of the Act are inoperative although registered with the Registrar of Societies. The Rules & Regulations of a society may provide for—

- (i) the conditions of admissions of members,
- (ii) the liability of members for fines, forfeitures under certain circumstances,
- (iii) the consequences of non-payment of any subscription or fine registration and expulsion of members,
- (iv) the appointment and removal of trustees and their powers,
- (v) the manner of appointing and removing the governing body,
- (vi) the manner in which the notice of meetings may be given,
- (vii) the quorum necessary for the transactions of business at meetings of the society,
- (viii) the manner of making, altering and rescinding regulations,

- (ix) the investment of funds, keeping of accounts and for annual or periodical audit of accounts,
- (x) the manner of dissolving the society,
- (xi) the determination upon the dissolution that the property be utilised by the Government or others in particular manner,
- (xii) matters to be provided in bye-laws and the manner in which they shall be made,
- (xiii) such other matters as may be thought expedient having reference to the nature and objects of the society.

Society may make bye-laws

A society can make its bye-laws in accordance with the Rules and Regulations of the society. If the rules do not provide for the making of bye-laws, bye-laws can be made at a general meeting of the society at which concurrent votes of three-fifths of the members present shall be necessary. If any penalty is imposed for the breach of any rule or bye-law of the society, such penalty can be recovered through the Court.

The bye-laws of a society may provide for:

- (a) The business hours of the society;
- (b) The objects of the society;
- (c) The activities of the society in furtherance of its objects;
- (d) The name of the person or officer, if any, authorised to sue or to be sued on behalf of the society;
- (e) The name of other person or officer who is empowered to give directions in regard to the business of the society;
- (f) Enrolment of members –
 - (i) Qualifications for membership, classification, restrictions and conditions, if any, thereof,
 - (ii) The entrance and other fee, or subscription, if any, to be collected from members,
 - (iii) The dates prescribed for payment of the amount specified in sub-clause (ii) above and levy of penalties or fine, if any, imposed on defaulting members.
- (g) Removal of members, the circumstances under which members could be removed from the rolls and the procedure for such removal and appeal, if any, against such removal;
- (h) Rights, applications, privileges of members;
 - (i) The manner in which the society shall transact its business;
 - (j) The constitution of the Committee and qualifications of the members of the Committee, their term of office and the procedure for their appointment and reappointment;
- (k) The preparation and filing with the concerned Registrar, of records, annual lists or other statements;
 - (l) Audit of accounts and the balance-sheet for the financial year;
- (m) The supply of copies of bye-laws, the receipt and expenditure account and of the balance sheet to the members on application and the fee payable for the same;
- (n) Imposition of fine, if any, for breach of the provisions of the bye-laws by any member or officer;
- (o) The mode of custody, application and investment of the funds of the society and the extent and conditions of such investment;

- (p) Funds earmarked specifically for the purpose of making provisions for dependent of a deceased or disabled member and the quantum of payment to be made thereof;
- (q) Arrangements for transactions of day-to-day business of the society, the expenditure to be incurred therefor, the staff to be employed and condition of services of such employees;
- (r)(i) Conduct of annual general meetings and procedure thereof,
- (ii) Conduct of extraordinary general meetings and procedure therefor and the number of members required for making a requisition in writing, calling for such a meeting,
- (s) Exhibition of the Register of Members, the books containing minutes and the books of accounts at the registered office of the society during business hours for inspection by its members free of charge.

The bye-laws may also deal with such other matters incidental to the organisation and working of the society and the management of its business as may be deemed necessary.

Working and Management of Society

As the society is a legal person having no physical existence, its governing body is its brain. Its activities are managed, executed and supervised by the governing body. It has to work within the objects of the society in accordance with the rules, regulations and bye-laws and to carry out the statutory duties under the main Act or the corresponding State Act. The governing body shall also be constituted in accordance with the rules and regulations of the society. The property of the society vests in the governing body and not in the members. The filing and defending of the suits by the society shall continue in the original form and the changes in the governing body shall not affect.

There should be minimum three members of the governing body. Its members are either elected or nominated as per the rules and regulations of the society. The term of office of members is three years and members can enjoy two terms. However, the term, retirement, expulsion are governed by the rules and regulations of the society.

The members of the governing body are the trustees of the properties of the society. They have to look after and manage the properties of the society. Here, property means both movable and immovable property. The properties of the society vest in the trustees and when there is no trustee, in the governing body. A trustee is a man who is the owner of the property and deals with it as principal owner and master subject only to an equitable obligation to account to some person to whom he stands in relation of trust and who is *cestui que trust*.

The members of the governing body is collectively responsible and accountable to comply with the statutory provisions of the Act for carrying out the functions of the society to achieve its objective(s) for which it is set up. The duties are detailed hereunder:-

1. To hold annual general meeting as per the rules and regulations of the society for laying before such meeting the statement of activities, Income & Expenditure Account and other information as provided in the rules and regulations for the purpose;
2. A list of the names, addresses and occupations of the governors, council, directors, committee or other governing body to which the management of the society is entrusted, is to be filed with the Registrar or such authority as prescribed once in a year either within 14 days of the date of holding such meeting or in the month of January every year.
3. To hold extra-ordinary general meeting to transact some special business, which is of urgent nature and cannot be deferred till the holding of the annual general meeting. The purposes of such meeting may be to amend, alter or change in name or address or extensions of operation etc.
4. To report changes or alterations made in the managing, governing body or in the rules of the society to the Registrar.

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5. To file notice of situation of the registered office of the society and of any change therein with the Registrar.
6. To register amendment in Memorandum of Association or Bye-laws with the Registrar by way of an application with a copy of the special resolution of the amendment with filing fee.
7. To supply copies of the Bye-laws, the Receipts/Incomes & Expenditure Account and Balance Sheet to the members of the society on their application with the fees, if any, prescribed by the society.
8. To invest and apply the funds and properties of the society in a manner as a prudent man will apply his own funds.
9. To keep and maintain a register of members of the society in accordance with the rules and regulations of the society.
10. To display the name of the society prominently at its registered office and other places of business.
11. To produce or submit periodical statement of Receipts Incomes & Expenditure A/c, Assets & Liabilities of the society.
12. To file a certified copy of every special resolution duly signed by an authorised officer of the society with the Registrar within the prescribed time.
13. To keep and maintain minutes of the meetings of the governing body and general body correctly and truly at the registered office of the society.
14. To retain all the important documents permanently.
15. To prepare periodical Accounts of the society and get them audited and to file Income-Tax Return, and
16. To attend all other duties as may be provided in the rules and regulations of the society.

Dissolution of Society

Under Section 13 of the Act, a society can be dissolved. Dissolution of a society becomes necessary where the objects for which it is formed, has been fulfilled or where the purposes for which it is formed, have become irrelevant, invalid or inoperative or by passing of a resolution by 3/5th majority of the members present at a meeting to dissolve the society for utilisation of its assets for some other better use. A society may be dissolved forthwith or within the agreed time. The following steps are to be taken for dissolution of a society:–

1. Decision of the governing body;
2. Convene a special general meeting of the members by giving a requisite notice for consideration and passing resolution by 3/5th majority of the members present thereat;
3. Decision as to dissolve it forthwith or at a later time agreed upon by them.
4. Decision for the actions to be taken for disposal of properties and settlement of claims and liabilities as per the rules and regulations of the society; and
5. Delegate authority to the person(s) of the governing body to comply with the decisions accordingly.

Where any Government is a member of the society or has contributed the funds to the society or is otherwise interested therein, the society shall have to obtain prior consent of such Government for the purpose.

Where any dispute arises on dissolution of a society relating to adjustment of its affairs, it should be referred to the principal Court of the original civil jurisdiction of the District where the chief building of the society is situated. The District Civil Court has the jurisdiction to decide the dispute of a society.

The main Act does not provide for dissolution of societies by the Registrar. Various States, of course, have made provisions for dissolution by the Registrar under the following circumstances –

- (1) Where the office of the society has ceased to be in the State of registration, or
- (2) Where the society has shifted its office from the State of registration to some other State, or
- (3) Where the activities of the society are considered subversive, or
- (4) Where it is carrying on any unlawful activity, or
- (5) Where it has allowed any unlawful activity to be carried on within any premises under its control,
- (6) Where the registered society has contravened any of the provisions of the Act or the rules made thereunder, or
- (7) Where the registered society is insolvent or must necessarily become so, or
- (8) Where the business of such registered society is conducted fraudulently or not in accordance with the bye-laws or the objects specified in the memorandum of the society, or
- (9) Where the society has contravened any provision of any other law for the time being in force, or
- (10) Where the number of members of the society is reduced below seven, or
- (11) Where the society has ceased to function for more than three years, or
- (12) Where the society is unable to pay its debts or meet its liability, or
- (13) Where the registration of the society has been cancelled on the ground that its activities or proposed activities have been or will be opposed to public policy.

The Registrar normally inquires or investigates into the activities of the society and calls upon the society to show cause why it should not be dissolved. The Registrar may move the Court for making an order for dissolution of the society, if the cause shown by the society is not satisfactory.

Similarly, the main Act does not provide for dissolution by the Court. But in some States, the Court may order for dissolution of a society on application by 10% of its members or the Registrar on having been satisfied that any one or more of the following circumstances exist:–

- (1) If there is any contravention by the society of the provisions of the Act, or
- (2) If the number of members is less than seven, or
- (3) If the society has ceased to function for more than three years, or
- (4) If the society is unable to pay its debts or meet its liabilities, or
- (5) If it is proper that the society has to be cancelled on the ground of its activities or
- (6) If proposed activities have been or will be opposed to the public policy.
- (7) If the activities of the society constitute a public nuisance,
- (8) If the activities of the society are otherwise opposed to public policy.

The Government may by written order containing detailed reasons, dissolve a society. Before passing such order an opportunity has to be given to the society for representation against dissolution. Any order of withdrawal of registration without notice or opportunity to the society for representation in the matter shall be against the rule of natural justice.

Consequences of Dissolution

Dissolution of a society results in cessation of its activities. Its liabilities are to be settled suitably and its surplus assets are to be given to another society or the Government in terms of its rules and regulations. If the rules do not provide for the same, the governing body of the society shall take appropriate steps with requisite majority vote or as directed by the Registrar or the Court. But in no circumstances, the surplus assets of the dissolved society can be paid or distributed amongst its members or any of them.

*NON PROFIT ORGANISATION UNDER SECTION 8 OF THE COMPANIES ACT, 2013

Section 8 of Companies Act, 2013 empowers Central Government to register a special type of company as limited company having charitable objects to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment, etc., without adding to its name the words 'Limited', 'Private Limited'.

Such company intends to apply its profits or any income of the company for promoting the objects of the company and intends to prohibit the payment of dividend to members. The Central Government shall issue licence on such terms and conditions prescribed in the Rule 19 & 20 of Companies (Incorporation) Rules, 2014. **[As discussed earlier in LESSON 1]**

For the companies under section 8 of the Act, the name shall include the words foundation, Forum, Association, Chambers, Confederation, Council, Electoral trust and the like etc.

The company registered under Section 8 shall enjoy all the privileges and subject to all the obligations of limited companies. It shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. Further a company registered under this section may convert itself into company of any other kind only after complying with such conditions as prescribed under Rule 21 & 22 of Companies (Incorporation) Rules, 2014. **[As discussed earlier in LESSON 1]**

Sub-Section 3 of section 8 permits a firm may be a member of the company registered under section 8. An OPC cannot be incorporated or converted into a company under section 8 of the Act.

Registration under Income Tax Act, 1961

Article 19(1)(c) of the Indian Constitution gives constitutional right to form association; Hence, non- profit organizations may be set up without any registration. However, to claim exemptions under the Income tax Act, 1961, and other laws, formal registration is required.

Some of the compliances required under Income Tax Act, 1961 are as under:

- To claim exemptions, filing of application seeking exemption is required. It also requires providing clarification and other documents to concerned Income Tax Officer.
- Compulsory Audit: if the total income of a non – profit organization as computed exceeds the maximum amount which is not chargeable to income tax in any previous year, the accounts are to be audited by a chartered accountant.
- Audit report is required to be submitted along with income tax return for the relevant assessment year;
- Annual Return: Every charitable organization is required to file a return of income in the prescribed FORM ITR 7 every year on or before the due date if total income exceeds the maximum amount, which is not chargeable to income tax.
- Permanent Account Number: is must for every charitable organization;

**all the procedural aspects have been covered earlier in Lesson 1*

- Certificate needs to be furnished to the person on whose behalf tax is deducted at source;
- Compliance with Appeals provisions under the Income Tax, if required.

Registration under Foreign Contribution (Regulation) Act, 2010

NPOs may accept foreign contributions, only after they obtain a certificate of registration under Foreign Contribution (Regulation) Act from the Central Government. An NPO which is not registered with the Central Government can also accept foreign contributions after obtaining the prior permission of the Central Government. However, such prior permission shall be valid for the specific purpose for which it is obtained.

Every certificate of registration granted is valid for a period of five years from the date of its issue, which can be renewed from time to time. Other statutory requirements are as under:

- Inspection of accounts;
- Maintenance of accounts and records;
- Submission of report, in the prescribed form, accompanied by an income and expenditure statement, balance sheet within nine months of the closure of financial year, to the secretary government of India.

NGOs - Challenges

Governance in the Non profit organisations is the biggest challenge. Governance in this sector is largely about accountability, transparency and sustainability of the entity.

Accountability refers to a process of stating commitments to different stakeholders, and being responsible for fulfilling them. Accountability is the obligation of an individual or an organization to account for its activities and accept responsibility for the results arising out of its activities.

Entities in the voluntary sector are accountable to several stakeholders. They include:

- donors /funders (for money)
- beneficiaries (for the delivery of a promised outcome: a changed life in most cases)
- Employees, volunteers, associates and program partners(for time and effort in implementing projects)
- Society (for developmental role assumed)
- Government – (for direct grants received, tax concessions)

Adding the vital dose of professionalism to the governing this sector is also the need of the hour. It is only in the recent past that entities like VANI, Credibility Alliance et. al have taken up the task of promoting governance.

Challenges In Driving Accountability In Voluntary Sector

- Lack of proper accountability framework
- Self-limiting, inward looking, short sighted goals (lack of professionalism);
- Lack of resources: Most of the NGOs are starved of funds and are forced to deny themselves the benefit of employing competent and professional staff.
- Issues relating to board constitution: Key positions in majority of the entities in the sector are occupied by the promoters of the entity, or their family members, without giving regard to their suitability for the position.
- Complacency of Board members: Most board members on a non-profit board are 'invited' to be board members, so that their name lends credibility. This tends to make the person complacent and content with merely lending his name.

- Inadequate State machinery for enforcement: Legal requirements and threat of penal action do not always drive the entity towards compliance and accountability.

PRIVILEGES AND EXEMPTIONS OF NON PROFIT ORGANIZATIONS

Privileges/Exemptions for Section 8 Companies vide MCA notification dated 05th June, 2015 and 13th June, 2017.

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
1	Chapter 1 Section 2(24)	Preliminary The provisions of clause (24) of section 2 shall not apply. Note: The definition of the term Secretary as defined in Section 2(24) does not apply to Section 8 Companies.
2	Section 2(68)	The requirement of Minimum paid-up share capital shall not apply. Note: Section 2(68) defines a private company. Though the companies (amendment) Act 2015 has removed the minimum prescription of Rs.1 lakh as minimum paid up capital for private limited companies, the provisions for prescribing minimum paid up capital is retained. However, the requirement of minimum- paid up capital shall not apply to section 8 companies.
3	Section 2(71)	The requirement of Minimum paid-up share capital shall not apply. Note: Section 2(71) defines a public company. Though the companies (amendment) Act 2015 has removed the minimum prescription of Rs.5 lakh as minimum paid up capital for public limited companies, the provisions for prescribing minimum paid up capital is retained. However, the requirement of minimum- paid up capital shall not apply to section 8 companies.
4	Chapter VII Section 96(2)	In sub-section (2), after the proviso and before the explanation, the following proviso shall be inserted, namely:- Provided further that the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting. Note: Section 96(2) inter-alia covers time, date venue of annual general meeting. In case of Section 8 companies, the time, date and place of each annual general meeting are decided upon beforehand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting
5	Section 101(1)	In sub-section (1), for the words "Twenty one days" the words "Fourteen Days" shall be substituted. Note: Section 101(1) deals with notice of the General meeting with clear twenty one days notice. In case of Section 8 Companies 14 clear days notice is sufficient for a general meeting.
6	Section 118	The section shall not apply as a whole except that minutes may be recorded within thirty days of the conclusion of every meeting

		<p>in case of companies where the articles of association provide for confirmation of minutes by circulation.</p> <p>Note: Section 118 deals with minutes of proceedings of general/ board and other meetings. Provision of Section 118 does not apply to Section 8 companies except that minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.</p>
7	<p>Chapter IX Section 136(1)</p>	<p>Accounts of Companies In sub-section (1), for the words “twenty one days”, the words “fourteen days” shall be substituted.</p> <p>Note: Section 136(1) deals with the rights of members to copies of audited financial statement, before twenty-one days before the date of annual general meeting. Section 8 companies may send the audited financial statements 14 days before the date of annual general meeting.</p>
8	<p>Chapter XI Sub-section (1) of Section 149 and the first proviso to sub- section (1)</p>	<p>Appointment and Qualification of Director</p> <p>Shall not apply. Note: Section 149(1) and first proviso to sub-section (1) relates to minimum and maximum number of directors. It is not applicable to Section 8 Companies.</p>
9	<p>Sub-sections (4), (5), (6), apply. (7), (8), (9), (10), (11), clause (i) of sub-section (12) and sub-section (13) of section 149.</p>	<p>Shall not apply. Note: The cluster of sub-sections of section 149 given herein pertains to independent directors. These provisions will not apply to a. Section 8 Company. Section 149(1)(b) shall also not apply on Section 8 Company vide notification dated 13th June, 2017.</p>
10	<p>Section 150</p>	<p>Shall not apply. Note: Section 150 deals with manner of selection of independent directors and maintenance of databank of independent directors, which is not applicable to Section 8 companies.</p>
11	<p>Proviso to sub-section (5) of section 152</p>	<p>Shall not apply. Note: Proviso to sub-section (5) of section 152 relates to appointment of independent 12directors. It is not applicable to section 8 companies.</p>
12	<p>Section 160</p>	<p>Shall not apply to companies whose articles provide for election of directors by ballot. Note: Section 160 deals with right of persons other than retiring directors to stand for directorship. Section 160 shall not apply to section 8 companies whose articles provide for election of directors by ballot</p>
13	<p>Section 165(1)</p>	<p>Shall not apply. Note: Section 165(1) deals with restrictions on number of directorships. Directorship of Section 8 Companies are not reckoned for this purpose.</p>

14	Chapter XII Section 173(1)	<p>Meeting of Board and its Powers Shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.</p> <p>Note: Section 173(1) mandates convening of first board meeting within 30 days of incorporation and minimum of four board meeting every year, with a gap not exceeding 120 days between two consecutive meetings. With regard to Section 8 companies this section shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months</p>
15	Section 174(1)	<p>In sub-section (1),—</p> <p>(a) for the words “one-third of its total strength or two directors, whichever is higher”, the words “either eight members or twenty five per cent. of its total strength whichever is less” shall be substituted;</p> <p>(b) the following proviso shall be inserted, namely:- “Provided that the quorum shall not be less than two members”.</p> <p>Note: Section 174(1) states that the quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this subsection. In case of Section 8 companies the quorum for the board meetings shall be either eight members or twenty five per cent. of its total strength whichever is less. However, the quorum shall not be less than two members.</p>
16	Section 177(2)	<p>The words “with independent directors forming a majority” shall be omitted.</p> <p>Note: Section 177(2) requires audit committee to have majority of independent directors. It is not required for Section 8 Companies.</p>
17	Section 178	<p>Shall not apply</p> <p>Note : Section 178 pertains to nomination and remuneration committee and stakeholders’ relationship committee. Section 178 is not applicable to section 8 companies.</p>
18	Section 179	<p>Matters referred to in clauses (d), (e) and (f) of sub-section (3) may be decided by the Board by circulation instead of at a Meeting.</p> <p>Note : Section 179(3) deals with resolutions to be passed at meetings of the Board. Section 179(3)(d), (e) and (f) pertains to resolution to borrow moneys, to invest funds of the company and to grant loans or give guarantee or provide security in respect of loans. These items may be decided by the Board by circulation in case of Section 8 companies</p>
19	Sub-section (2) of section 184	<p>Shall apply only if the transaction with reference to section 188 on</p>

		<p>section 184 the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p> <p>Note : Section 184(2) prohibits participation of interested directors. In case of Section 8 Companies it shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p>
20	Sub-section (7) of section 186.	<p>In sub-section (7), the following proviso shall be inserted, namely:- Provided that nothing contained in this sub-section shall apply to a company in which twenty-six per cent. or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance of its objects as stated in its memorandum of association.”.vide notification dated 13th June, 2017.</p>
21	Section 189	<p>Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p> <p>Note: Section 189 deals with register of contracts or arrangements in which directors are interested. Section 189 is applicable to section 8 companies only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p>

Role of Company Secretary

Insufficient monitoring, lack of oversight, inadequate governance standards – key issues identified in not-for-profit sector report in one of the study conducted in January, 2014. A report of the FCRA states that about 40% entities have not filed their annual reports. A vast number of trusts and societies do not file returns and report as required by the statute. Hundreds of entities fail to adhere to the laws thereby risking penal action, loss of grants, loss of goodwill due to blacklisting, reflects a casual attitude towards accountability.

• March 2015: The government has banned 69 NGOs, from receiving foreign funds under Foreign Contributions Regulation Act (FCRA) after adverse reports about their activities from intelligence agencies.

Professionals, the company secretary, as governance professional, can facilitate this to a large extent. With expertise in law, exposure in management faculties, hands on training in formulating and executing governance processes, and communication skills, a company secretary is well equipped to partner with a non-profit entity to make accountability effective.

Areas in which a company secretary can play a significant role are:

- Structuring of the entity (choice of form of legal entity)
- Drafting of charter documents (Memorandum, Articles, Trust Deed, Society bye-laws)
- Structuring the constitution of the Board
- Facilitating the conduct of board /stakeholder meetings
- Ensuring legal compliance
- Drafting of voluntary codes for governance
- Coordinating and integrating various stakeholders

- Timely reporting to stakeholders
- Evolving governance codes and processes
- Governance education and training of stakeholders in governance
- Strategic Planning, Execution and Evaluation.
- Advocacy at various levels of government machinery
- Facilitate accreditation and audit by external agencies

LESSON ROUND-UP

- The Constitution of India explicitly recognises a number of rights to freedom. Article 19 gives right “to freedom to form associations or unions”. ‘Societies’ is a subject under the State list (Entry 32), whereas ‘Trust’ is in the Concurrent list (Entry 10).
- The Societies Registration Act, 1860, the Indian Trusts Act, 1882 and the Section 8 of the Indian Companies Act, 2013 are the three enactments which seem to fulfil requirements of non profit organizations created for the larger public good.
- The major laws governing Trusts are “The Indian Trust Act, 1882.” Trusts may be divided into *public* and *private*. The former is constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. Unlike private trusts, they are of a permanent and indefinite character and not confined to any certain limits prescribed in a settlement.
- The preamble of the Societies Registration Act, 1860 states that it is *an Act for the registration of literary, scientific and charitable societies*. Whereas it is expedient the provision should be made for improving the legal condition or societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education, or for charitable purposes.
- A society can be registered by minimum seven individuals which may include foreigners, or registered society for the promotion of literature, science or fine arts or diffusion of useful knowledge and political education or charitable purposes, as specified in Section 20 of the Societies Registration Act, 1860.
- Section 8 of Companies Act, 2013 provides for granting of license by the Central Government for formation of ‘non-profit companies’ and also provides for a mechanism through which an Association can be registered as a Company with a limited liability, if such association is formed for promoting commerce, art, science, religion or any other useful object and intends to apply its profits/income in promoting its objects.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Distinguish between the following:-
 - (a) Public trust and private trust
 - (b) Oral trust and written trust
2. Explain the procedure for registration of societies under the Societies Registration Act, 1860.
3. Write short notes on the following:-
 - (i) Extinction of a trust
 - (ii) Consequences of dissolution of a society

PROFESSIONAL PROGRAMME

ADVANCED COMPANY LAW AND PRACTICE

PP-ACL&P/2017

TEST PAPERS

A Guide to CS Students

To enable the students in achieving their goal to become successful professionals, Institute has prepared a booklet 'A Guide to CS Students" providing the subject specific guidance on different papers and subjects contained in the ICSI curriculum. The booklet is available on ICSI website and students may down load from <http://www.icsi.edu/Portals/0/AGUIDETOCSSSTUDENTS.pdf>

WARNING

It is brought to the notice of all students that use of any malpractice in Examination is misconduct as provided in the explanation to Regulation 27 and accordingly the registration of such students is liable to be cancelled or terminated. The text of regulation 27 is reproduced below for information:

"27. Suspension and cancellation of examination results or registration

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or the Committee concerned may suo motu or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity to state his case, suspend or debar the person from appearing in any one or more examinations, cancel his examination result, or studentship registration, or debar him from future registration as a student, as the case may be.

Explanation - Misconduct for the purpose of this regulation shall mean and include behaviour in a disorderly manner in relation to the Institute or in or near an Examination premises/centre, breach of any regulation, condition, guideline or direction laid down by the Institute, malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with the writing of any examination conducted by the Institute".

PROFESSIONAL PROGRAMME

ADVANCED COMPANY LAW AND PRACTICE

TEST PAPER 1

(This Test Paper is for recapitulate and practice for the students. Students need not to submit responses/answers to this test paper to the Institute.)

Time Allowed : 3 Hours

Maximum Marks : 100

NOTE : 1. Answer All Questions

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

Total Number of questions: 6

1. Draft Resolutions and also write the type of meeting and the type of resolution with respect to the following:
 - a) For appointment of woman Director.
 - b) For alterations of articles of association of the company.
 - c) For Opening a Bank Account for the Company
 - d) For issue of securities on the Private Placement. *(5 marks each)*

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. Distinguish between the following:
 - a) E-voting and Postal ballot
 - b) Compoundable and non-compoundable offences
 - c) Resident Director and Independent Director
 - d) Dormant Company and Defunct Company *(4 marks each)*

OR (Alternate question to Q. No. 2)

- 2A. Write notes on four on the following:
 - a) CSR Policy
 - b) Adjudication of Penalties
 - c) Unpaid and Unclaimed Dividend
 - d) Modification of a charge. *(4 marks each)*

Attempt all parts of either Q. No. 3 or Q. No. 3A

3.
 - a) Companies Act, 2013 lays greater emphasis on governance and transparency. Comment.
 - b). What is the role of Independent Director in a company? Who can be appointed as Independent Director?
 - c) Explain the provisions governing one person company (OPC). Can a person incorporate more than one OPC ?

(d) In relation to e-Form INC-32, state the:

- (i) Purpose of filing of this form
- (ii) Particulars required to be filled-in the form
- (iii) Documents to be attached with the form
- (iv) Person authorised to sign and certify the contents of the form. (4 marks each)

OR (Alternate question to Q.No.3)

- 3A. a) Define the term 'video-conferencing'. Write down the matters not to be dealt with in a meeting through video conferencing or other Audio visual means.
- b) State the procedure for appointment of auditors in the casual vacancy caused due to resignation, by the company in which 26% of share capital is held by the State Government.
- c) Explain the provisions of the Companies Act, 2013 and rules made there under with respect to secretarial audit.
- d) Write a brief note on Appointment and responsibilities of a Company Secretary under the Australian Corporations Act. (4 marks each)
4. a) What are the matters that should be stated in the explanatory statement of a resolution approving an ESOP Scheme?
- b) Explain the provisions governing vigil mechanism under the Companies Act, 2013. Is it applicable to all companies?
- c) By providing the postal ballot and e-voting facility, the requirement of holding a general meeting may be dispensed with by a company. Comment with the help of a case law.
- d) Give the highlights of Secretarial Standard on General Meetings (SS-2) in brief? (4 marks each)
5. a) Is Company Secretary a 'managerial personnel' for the purpose of restrictions on remuneration under section 197 ? Is his salary considered for the purpose of computation of managerial remuneration? Would it make any difference if he is also a director of a company? (8 marks)
- b) Explain the procedure for conversion of section 8 company into company of any other kind. (8 marks)
- 6 (a) What is share certificate. Explain the procedure for issue of share certificate. (4 marks)
- (b) What is the legal requirement for appointing debenture trustee. What are his duties and responsibilities under the Companies Act, 2013 (4 marks)
- (c) Draft a Board's report keeping in view the requirements of Companies Act, 2013 as well as Listing Agreement. (8 marks)

TEST PAPER 2

(This Test Paper is for recapitulate and practice for the students. Students need not to submit responses/answers to this test paper to the Institute.)

Time Allowed : 3 Hours

Maximum Marks : 100

NOTE: 1. Answer **Six questions** including Question No. 1 which is compulsory

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

1. (a) Re-write the following sentences after filling- in the blank spaces with appropriate word(s)/figure(s):

- (i) If a company fails to furnish Director Identification Number under section 157(1), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than _____ but which may extend to _____.
- (ii) Section 161 empowers the Board of directors to appoint an alternate director, if the _____ provide for it or the resolution passed in _____ meeting authorise it.
- (iii) A Company desirous of shifting its registered office from jurisdiction of one Registrar of companies to another with in same state wherein more than one ROC's have jurisdiction must pass _____ resolution at a general meeting and obtain confirmation of the _____.
- (iv) A Company proposing to issue a red hearing prospectus under section 32(1) shall file it with the _____ at least _____ prior to the opening of the subscription list and the offer.

(2 marks each)

(b) In relation to e- form no. MSC- 4, state that —

- (i) Reasons of filling the form
- (ii) Particulars required to be filled in the form
- (iii) Documents to be attached with the form
- (iv) Person authorised to sign the form.

(1 mark each)

(c) State, with reasons in brief, whether the following statements are true or false:

- (i) Liability clause of a company cannot be altered.
- (ii) Sweat equity shares can be issued at a discount.
- (iii) Director of a company Incorporated outside India are required to obtain DIN.
- (iv) Is CSR is mandatory for all the companies.

(1 mark each)

(d) Explain the provisions of Regulation 32 of the Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 Relating To Statement Of Deviation(S) Or Variation(S).

(4 marks)

2. Draft the resolution, also indicate the type of resolution and the body in the meeting whereof such resolution is required to be passed:

- (i) G India Ltd. is sanctioned a credit facility of Rs 25 crores by the Union Bank of India, Lodi Road, Delhi, against its inventory and receivables. The company wants to enjoy the sanctioned credit

facility. Draft resolution for approval of bank loan

- (ii) For declaration of a dividend of 50% on equity shares.
 - (iii) To appoint the First auditor(s) where Board fails to appoint within one month of incorporation of company.
 - (iv) Passing of Resolution for Re- conversion of stock into shares. (4 marks each)
- 3 (a) What are the requirements with regard to quorum and frequency of Board Meetings?
- (b) Enumerate the procedure for conversion of a public company into a section 8 company.
- (c) The Board of Directors of ABC Ltd. of which you are the Company Secretary need your advice on the Appointment of Ram as an nominee director who is nominated by Bank of Baroda, in pursuance of a Loan agreement to represent the interest of such financial institution.
- (d) Wheel Ltd. wants to recruit Anil as the Key Managerial Personnel of the company, while he is already the Managing Director of Sprite Ltd. Advise the company referring to the provisions of the Companies Act, 2013 and draft a suitable Board resolution for the appointment. (4 marks each)
4. (a) Explain the salient features of the Companies Act, 2006 of UK relating to the following:
- I. Minimum authorised capital required in case of public company.
 - II. Minimum membership required for carrying on business by a company.
- (b) Explain the Remuneration of Director under Australia Corporations Act?
- (c) Mention the provisions of the Singapore Companies Act relating to formation of companies.
- (d) Account for the significance of Hong kong as a vibrant business centre, having special advantage. Name the law that governs companies in Hong Kong. (4 marks each)
5. (a) Kingdom Pvt. Ltd., incorporated on 10th November, 2013, has not been functioning for the past two years. Board of directors of the company decided at its Board meeting to apply to the Registrar of Companies (ROC) to get the company's name removed from Register of Companies under section 248. Board authorised its director Mr. A to apply to the Registrar to get the company's name struck-off from ROC's records. Mr. A seeks your guidance in drafting an indemnity bond for this purpose. Draft a suitable indemnity bond to be issued to ROC.
- (b) Amba , Aruna and Anannya failed to pay the first call money of Rs 1.5 per equity share of Rs 10 each on 200, 300 and 1,000 equity shares held by them respectively in Bright prospects Ltd. The Board of Directors wants to know what can be done in this situation. Guide the Board of Directors by way of a note stating the steps involved and procedure to be followed by the company if it wants to forfeit the shares held by them. Also explain to the Board of Directors whether the forfeiture will amount to reduction of capital.
- (c) The Central Government has established a Fund to be known as IEPF under section 125 of the Companies Act, 2013, Explain.
- (d) XYZ Ltd. proposes to acquire 12.5% of shares of Prolong (P) Ltd. For Rs 20 Lakhs, which have a face value of Rs 15 Lakhs . XYZ Ltd. has an outstanding loan of Rs 10 Lakhs payable to a public Financial institution . The investing company (XYZ Ltd.) has not defaulted in payment of the loan instalments stipulated in the loan agreement. Based on the following data, advise XYZ Ltd. About the legal position in this respect and allowability of the proposed investment:

	XYZ Ltd.	Prolong (P) Ltd.
	(Rs)	(Rs)
Authorised capital	50 Lakhs	2 crores
Issued, subscribed and paid- up capital	25 Lakhs	1.2 crores
Free Reserves	5 Lakhs	1.5 Crores

As on the date of proposed acquisition, XYZ Ltd. does not hold any shares of Prolong (P) Ltd. or any other company. (4 marks each)

6. (a) Discuss how SS- 1 prescribed by the Secretarial Standard Board (SSB) of ICSI has standardised the procedure for convening and conducting Board Meetings of the company?
- (b) Who can be appointed as an Independent Director by a Listed Company under Companies Act, 2013. Also discuss the procedure and the remuneration provisions. (8 marks each)
7. (a) What are the key benefits of MCA-21 project? Write a note on Digital Signature Certificate required by professionals and others for e-filing.
- (b) List the items of business which can be transacted by a listed company through Postal Ballot.
- (c) A charge for Rs 3 crores was created and registered by LMN Ltd. in favour of State Bank of India. The same was fully repaid on 31st August, 2014, but the relevant 'E- Form' for registering the satisfaction of the charge was filed on 10th October 2015. The company then realised that it has unintentionally delayed the filing and has attracted penal provision of the Companies Act, 2013 in this regard. The company has approached Mr. C, a Practicing Company Secretary for his advice as regards the possibility of any condonation of the offence. What would be the advice?
- (d) Explain the role of Company Secretary as a compliance officer. (4 marks each)
8. Write notes on the following. Attempt **any four**:
- I. Nomination and remuneration Committee
 - II. Adjournment of meeting
 - III. National Financial Reporting Authority
 - IV. Price Sensitive information and Chinese wall
 - V. Corporate Identification Number (4 marks each)