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STATUTORY RECOGNITION

- Chapter No. XIII of the Companies Act, 2013
- Applicable Sections: Section 204 and 143
- Rules: Companies (Appointment and remuneration of Managerial Personnel) Rules, 2014 [RULE 9]

APPLICABILITY OF SECTION 204

❑ Section 204 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes that:

- ✓ Every Listed Company; and
- ✓ 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.

Shall annex with its Board report made u/s. 134(3), a Secretarial Audit Report given by a Company Secretary in practice.

APPOINTMENT OF SECRETARIAL AUDITOR

- The appointment by the Board of Directors - Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014.
- But desirable that the appointment be also confirmed by the Company in its General Meeting.
- PCS to communicate to the earlier incumbent.
- Till date, there is no limit prescribed on the Secretarial Audit.
- presently, Private companies are out of purview of the Secretarial Audit.

APPLICABILITY OF SECTION 143

The Secretarial Auditor :

- ✓ shall have access to the books and records of the Company
- ✓ can seek explanation from the officers of the company
- ✓ has access to records of all subsidiary companies
- ✓ the SAR is to be given to the members as an annexure to the Directors' Report.
- ✓ the negative comments / qualifications in SAR should be supported with reasons.
- ✓ Verification of Compliance with the Secretarial Standards is necessary.

- ✓ If PCS has reason to believe that fraud has been committed, the same should be reported to the Central Government within 60 days from the knowledge of fraud, as prescribed in section 143 (12) & Rules .
- ✓ Violation of sub section 12 attracts penalty which minimum Rs.1 Lakh Max. Rs. 25 Lakhs.
- ✓ **Other provisions in respect of Statutory Audit like Section 139 to 142 & 144 are not applicable to Secretarial Audit. Thus it is possible to take a view that consultant to the Company can act as its Secretarial Auditor.**
- ✓ Strictly speaking, the provisions related to rotation of auditors, their remuneration, resignation, disqualifications etc. are not applicable to the Secretarial Auditor.
- ✓ However it is desirable that the provisions of Section 141 regarding the eligibility and disqualification should be complied with by the Secretarial Auditor.

✓ Though the provisions of Section 139 to 144 (Except 143 which is applicable mutatis mutandis) are not applicable to the secretarial audit & secretarial auditor, it would be desirable that the disqualifications for appointment as prescribed under section 143(3) are to be taken care of:

✓ Section 141(3): The following persons shall not be eligible for appointment as the Secretarial Auditor of the 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—

(i) 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 One Lac Rupees ;

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs 5 lacs ; or

(iii) 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 an amount of Rs 1 lac ;

(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 of such nature as may be prescribed. – Transactions in ordinary course of business which are at Arm's length are exempted.

(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;

(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

OTHER ASPECTS :

- ✓ the Secretarial Auditor should attend the general meetings of the company.
- ✓ the SAR should be in Form MR-3, as prescribed in the Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.
- ✓ the relevance of SAR is to the stakeholders & the public at large.
- ✓ Guidance Note is being issued by the Institute of Company Secretaries of India for the Secretarial Audit & the preparation of SAR.
- ✓ There has to be systematic and disciplined approach towards the Secretarial Audit by the Secretarial Auditor or as well as the company.

OTHER ASPECTS : (Contd)

- ✓ Secretarial Audit is an independent objective Assurance intended to add value & improve the quality & compliance level of the Company.
- ✓ it improves the effectiveness of risk management, control and governance processes.
- ✓ Why only Bigger Companies?
- ✓ Compliance with the procedures is equally important
- ✓ Promoters, Management, independent Directors, Government Authorities, Investors derives benefits of the Secretarial Audit.

SECRETARIAL AUDIT PROCESS

1. RECEIVE FORMAL LETTER OF APPOINTMENT
2. COMMUNICATION TO EARLIER INCUMBANT
3. PRELIMINARY DISCUSSIONS
4. TEAM BUILDING
5. PREPARING AUDIT SCHEDULE

SECRETARIAL AUDIT PROCESS

6. DECIDE AUDIT TOOLS TO BE USED-
TEST CHECKS, INTERVIEWS AND ANALYSIS
7. FORM UNBIASED AND OBJECTIVE VIEW
8. THOUGH ADMITTEDLY CERTAIN SUBJECTIVITY
EXISTS – WHEN ONE EXPRESSES AN OPINION
9. AUDIT DIARY
10. PREPARE DRAFT REPORT

✓ **While drafting SAR, PCS has to take into consideration the following aspects:**

- make a list of statutory provisions applicable to the auditee company.
- make a list of good corporate practice followed by auditee company.
- Keep checklist to ensure compliance of the above
- Report aberration and deviations, if any
- decide the manner in which SR has to be conducted
- understand the meaning of the word “corporate conduct”
- maintain proper audit diary and responses to his questionnaire from the auditee company.
- Take note of ‘board process’ followed in the auditee company
- Take note of compliance mechanism whether in place in the auditee company.

- make a list of records to be maintained and forms to be filed under the following:
 - Companies Act
 - SCRA
 - Depositories Act
 - FEMA
 - SEBI guidelines
 - takeover regulations
 - Insider regulations
 - ICDR
 - ESOP guidelines
 - Issue & Listing of debt securities
 - Register transfer agent regulations
 - delisting regulations
 - buyback regulations

- Make a list of all applicable laws which may be industries specific like infrastructure companies, pharmaceutical companies and etc are regulated by different laws.
- The above aspect of applicability of other laws is going to be quite critical and PCS may have to prepare a list of laws which are applicable to companies. Appropriate declaration from the management of the company as well as homework has to be done by PCS
- make a list of secretarial standard applicable to the auditee company
- make a check list of compliance with Listing Agreement

- PCS has to verify and confirm that the auditee company has complied with provisions of various acts, regulations, guidelines, standards and etc.
- Apart from the above PCS has to verify the composition and constitution of board of directors. The changes therein are also to be certified as legal
- The manner of convening and conducting a board meeting is also a part of SAR

- A letter of representation will have to be obtained from the auditee company before reporting about so many things including inter alia:

- Whether further information or clarification on agenda was called by directors. If yes, whether the same was provided or not?
- In what manner meaningful participation is to be ensured in the meeting?
- Whether any dissent was expressed by any director. If yes, whether the same was recorded or not?
- Whether any event or action took place in the auditee company which may have bearing on the compliances under various law, regulations, guidelines, standards and etc.?
- Answers to these and few other questions can be given only by the auditee company and PCS cannot verify these independently.

SCOPE OF SECRETARIAL AUDIT

- ✓ While secretarial audit envisages the verification of all secretarial records of a company. For ease of presentation, the following key areas have been highlighted for verification under Companies Act, 2013
 1. Maintenance of registers and records.
 2. Filing of forms, returns and documents .
 3. Memorandum and / or Articles of Association.
 4. Meetings of directors/committees thereof, shareholders and other stakeholders.
 5. Secretarial standards.

SCOPE OF SECRETARIAL AUDIT

(Contd)

6. Directors and key managerial personnel (“KMP”)
7. Disclosures.
8. Issue of shares and other securities.
9. Transfer and transmission of shares and other securities and related matters.
10. Dividend.
11. Deposits.
12. Borrowings.
13. Loans, investments, guaranties and securities.
14. Loans to directors etc. and Related party transactions.
15. Charges.
16. Corporate Social responsibility

FAILURE/LAPSE ON PART OF SECRETARIAL AUDITOR- PENALTY FOR INCORRECT REPORT AND DISCIPLINARY ACTION FOR PROFESSIONAL MISCONDUCT

✓ **SECTION 448 - PENALTY FOR FALSE STATEMENTS.**

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.

✓ SECTION 447 - PUNISHMENT FOR FRAUD

(I) imprisonment for a term of minimum six months & maximum ten years; and

(II) 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.

(III) In case, the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

✓ SECTION 204 - SECRETARIAL AUDIT FOR BIGGER COMPANIES
ETC

Sub-section 4 casts responsibility on the company secretary in practice in case of default of provision of section 204 and shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

**What is the coverage of 'Point (vi)
(other laws as may be applicable specifically to the
company)'
(MR-3: Format of Secretarial Audit).**

The ICSI is of the view that :

Apart from 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 and environmental laws.

SKILLS REQUIRED

PCS expected to have the following:

Team: appropriately trained staff, who can support the preparation of the report, Team should be communicated with basic audit requirements and ethics.

Related legislative, administrative updates should be timely shared and communicated with the team to build and maintain the expertise.

Adhering to the timelines: Schedule set to conduct the audit process should be strictly adhered to in order to gain the confidence of the client and boost the expertise level of the team.

Honesty and impartiality: A PCS has the professional duty to provide an unbiased and objective view. PCS should be independent from the operations evaluated

The secretarial auditor is expected to ensure that activities of the client are in accordance with the applicable procedure and that supporting evidence maintained by the company is genuine.

Maintaining Audit Diary: The Audit exercise by the team members should be recorded daily. Such maintenance of diary would help in keeping audit trail that would come handy to ensure the quality of audit.

WHILE ACCEPTING A NEW ASSIGNMENT

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The following points
should be taken in to
consideration:

MEMORANDUM AND ARTICLES OF ASSOCIATION

MEMORANDUM OF ASSOCIATION

1.	Name of the Company	Check Certificate of Incorporation for correct name or changes thereof; Compliance u/s 187; Nature of the Company. (e.g. Private, Public or Section 8 Company).
2.	Registered office of the Company	Place of maintaining books of accounts.
3.	Objects Clause	Check if accounting policies are framed in accordance with the objects.
4.	Capital Clause	Whether the paid up share capital is within the authorised share capital of the company.
5.	Liability Clause	In case of winding up of company, check whether liability is limited or unlimited.

ARTICLES OF ASSOCIATION

Check provisions for:

- .Powers and authorities of the board.
- .Borrowing powers - ceiling if any,
- .Restrictions on allotment and transfers of private companies.
- .Super majority clause.

SPECIAL RESOLUTIONS

Check:

- . Meaning and requirement.
- . Votes cast in favor should not be less than least three times the votes cast against.
- . Should be proposed as a special resolution.
- . Notice of the meeting is duly given.

Cases where special resolution is must

- To make entrenchment provisions in the articles of a Public Company. [**Sec. 5 (4)**]
- To shift the Registered office outside the local limits. [**Sec. 12 (5)**]
- Alteration of MOA. [**Sec. 13 (1)**]
- To change the objects of utilization of the money raised from the public through prospectus. [**Sec. 13 (8)**]

- Alteration of AOA including conversion of Private in to Public and Public in to Private limited Company.

[Sec. 14 (1)]

- To vary the terms of prospectus or the objects of issuing the prospectus for which the prospectus was issued.

[Sec. 27 (1)]

- To issue Global Depository Receipts. **[Sec. 41]**

- To vary the rights attached to the shares of any class.

[Sec. 48 (1)]

- To issue sweat equity shares of a class of shares already issued. [**Sec. 54**]
- To issue further shares under the scheme of ESOP/ ESOS [**Sec. 62 (1) (b)**]
- Further issue of shares. [**Sec. 62 (1) (c)**]
- Conversion of debentures or loan in to shares. [**Sec. 62 (3)**]
- Reduction of share capital [**Sec. 66**]

- Purchase of the securities of its own by the Company.
[Sec. 68 (2)]
- Issue of convertible Debentures. **[Sec. 71]**
- To maintain the registers and copies of Annual Return filled at place other than the registered office. **[Sec. 94]**
- To remove the auditor before the expiry of his term.
[Sec. 140]
- To appoint more than fifteen directors on Board
[Sec. 149 (1)]

- To re-appoint an independent director after expiry of a term of five consecutive years. **[Sec. 149 (10)]**
- To reduce the no. of directorships for any Director. **[Sec. 165 (2)]**
- To exercise some of the powers as provided under section 180, by the Board of directors only with the consent of company. **[Sec. 180]**
- To provide loan to MD and/ or WTD. **[Sec. 185]**

- To provide loan or guarantee exceeding:

60% per cent of paid up capital, free reserves and securities premium account, or

100% of free reserves and securities premium account, whichever is more. **[Sec. 186]**

- To enter in to contract or an arrangement with related parties. **[Sec. 188]**

- To appoint the person as MD, WTD or the manager who has attained the age of 70 years. **[Sec. 196]**

- To determine the remuneration payable to the Directors. [Sec. 197 (4)]
- To investigate the affairs of the Company. [Sec. 210]
- Investigation of the affairs by SFIO [Sec. 212]
- Filing of application to ROC for removal of name of the Company from the register [Sec. 248]
- To approve the scheme of amalgamation. [Sec. 262]
- Winding up by the Tribunal. [Sec. 271]

- Voluntary winding up. [Sec. 304]
- To grant any authority to the liquidator, for the purpose of winding up. [Sec. 319 (1)]
- To enter any arrangement with the creditors. [Sec. 321]
- To grant certain powers to Company Liquidator. [Sec. 343]
- Disposing the Books and papers of the Company at the time of dissolution. [Sec. 347]
- To adopt Table F in Schedule I. [Sec. 371]

CENTRAL GOVERNMENT APPROVAL

Some cases where Central Government approval required:

- For Registering a Company with a name which is restricted under **Sec. 4 (3)**
- Alteration of MOA and AOA of Sec 8 Companies.
[Sec. 8 (4) (I)]
- Shifting of registered office from one state to another..

- Removal of an Auditor from his office before the expiry of his term. [**Sec. 140 (1)**]
- If appointment of MD, WTD and Manager is at variance to the conditions specified in schedule V. [**Sec. 196 (4)**]
- Payment of Managerial Remuneration exceeding 11 % of the Net Profit. [**Sec. 197 (1)**]

CENTRAL GOVERNMENT APPROVAL

Cont...

- Investigation in to the affairs of the Company, by an Inspector appointed under section **210, 212 and 213**
- Disposal of the Books and papers of the amalgamated Companies. [**Sec. 239**]
- Presentation of winding up petition to the Tribunal by the Registrar. [**Sec. 272 (4)**].

SHARE CAPITAL

ACCOUNTING OF SHARE CAPITAL

.Section 52 – Issue of shares at a premium

- a) Whether amount transferred to Securities Premium Account?
- b) Whether such amount is being utilized for the purpose as mentioned in Sec. 52.
- c) Amount not to form an identifiable part of the Company's reserves.

.Section 62 – Further issue of capital

- a) Whether the notice for offer of right shares have been duly sent to the members; or
- b) Whether the same have been exercised by the members within the prescribed period of 30 days.

.Section 68 – Buy back of shares

Buy back to be done from:

- a) Free reserves; or
- b) Securities Premium Account; or
- c) Proceeds of any shares or other specified securities.

Other Compliances:

- a) Valuation of shares for buy back
- b) Limits of buy back – 10% or 25% as applicable
- c) Proper authority for buy back – board or shareholders
- d) Debt equity ratio post buy back not to exceed 2:1
- e) No buy back in cases u/s 70

a) On conclusion of buy back, change in authorized, **subscribed, issued** and paid up capital of company

b) Certificate from auditor about solvency of the company.

c) Foreign shareholders – taxation aspects

.Section 66 – Reduction in capital

Check whether there are any arrears in repayment of deposits and interest thereon.

^AA) Ways of reducing share capital:

- . Reduce the liability on any of its shares in respect of share
 - capital not paid up.

- . Cancel any paid up share capital - lost or unrepresented
 - by available assets; or

Pay off any paid up share capital- in excess of the wants of the company.

B) Effect of reduction of capital:

- Liability of members
- Liability of creditors

C) Authority for reduction:

Shareholders and confirmation of the Tribunal.

.ISSUE OF BONUS SHARES [SEC. 63]

A) Eligibility of company to issue bonus shares.

A) Adequate un-issued equity capital in the authorized capital.

B) Effect of bonus by increase in paid up capital of the company.

A) Relevant accounting entry for the cancelling the reducing the reserve and increasing the paid up capital.

No Bonus shares can be issued by any Company by capitalizing the reserves created out of the revaluation of assets.

Forfeiture of Shares

- .Creation of Capital Redemption Reserve
- .Valuation of shares for reissue of forfeited shares.

.CRITICAL ISSUES:

- a) Whether Capital Redemption Reserve should be created where shares are merely forfeited but not reissued?
- b) Is there any change in paid up share capital when forfeited shares are reissued?

Allotment of Securities – Section 39

- a) Whether share application money received.
- b) Amount payable on subscription not less than 5% of nominal amount of share or such other amount as may be specified by SEBI.
- c) Return of share application money where minimum subscription is not received within 30 days from the date of issue of prospectus.

Transfer of shares by top 5 shareholders

.Check:

a) Changes in shareholding of Top 5 shareholders of the company.

b) Minutes registering the transfer.

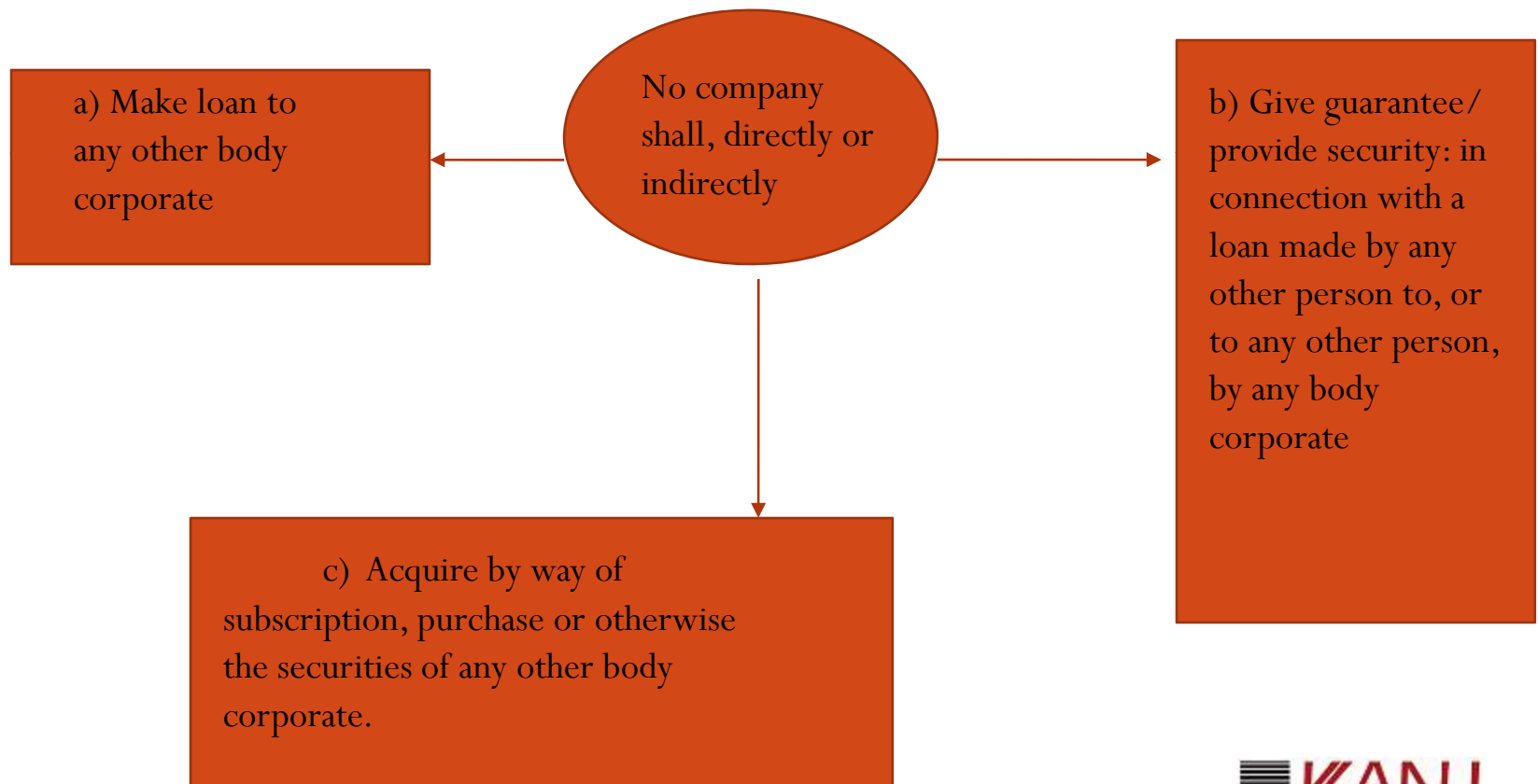
c) Transfer deed (Section 56).

LOANS AND INVESTMENTS

.Whether the requirements under section 186 of the Companies Act, 2013 have been complied with.

.Loans to directors: Whether the requirements under section 185 of the Companies Act, 2013 have been complied with.

LIMITS OF SECTION 186



.Limits:

a) 60% of the paid up share capital, free reserves and securities premium account; or

a) 100% of free reserves and securities premium account whichever is higher

DIVIDEND

RELEVANT PROVISIONS SECTION 123

Check:

Repayment of deposits under sec. 74.

Utilization of any other reserve except free reserves, for the payment of dividend, is not allowed.

.Time limit for transfer to separate bank account and payment to shareholders.

.Companies (Declaration of Dividend Out of
.Reserves) Rules, 1975.

.Investor Education and Protection Fund
(Awareness and Protection of Investors)
.Rules, 2001.

.Dividend should be paid out of the profit of the company for the financial year or out of profit(s) for the previous financial year(s) -not been transferred to reserves, or out of both, only after providing for depreciation for the year and arrears of depreciation, if any.

.Dividend should not be declared out of the Securities Premium Account or the Capital Redemption Reserve Account or Revaluation Reserve or Amalgamation Reserve or out of profit on re-issue of forfeited shares or out of profit earned prior to the incorporation of the company.

.Interim Dividend, if declared, is payable out of estimated profit for the period for which Interim Dividend is to be declared, after taking into account depreciation for the full year and arrears of depreciation, Dividend at the contracted rate on preference shares, if any, appropriations and transfers to statutory reserves, taxation, and the provisions of the Companies (Transfer of Profits to Reserves) Rules, 1975.

.Where a company has issued equity shares with differential rights as to Dividend, Interim Dividend may, at the option of the Board, be declared on all or any one or more of the classes of such shares in accordance with the terms of issue.

DISCLOSURES:

.The Balance Sheet of the company: Under the head 'current liabilities and provisions', the amount lying in the Unpaid Dividend Account together with interest accrued thereon, if any.

.The Annual Report of the company: The total amount lying in the Unpaid Dividend Account of the company in respect of the last 7 years. The amount of Dividend, if any, transferred by the company to the Investor Education and Protection Fund during the year should also be disclosed.

.Any claimant of the shares can claim the amount of the unpaid dividend with respect to his shares, even if such unpaid amount has been transferred to Investor Education and Protection Fund.

DEPOSITS

Section 73, 74

.Deposit to be taken as per the limits prescribed by the provisions of the Companies Act, 2013

.Deposit to be repaid within the time limit prescribed.

.Where auditor certifies non compliance with provisions- held to be sufficient prima facie evidence for framing of charge. [Mohanlal Rathi v. Addl. ROC]

MANAGERIAL REMUNERATION

.Whether the payment of remuneration to Directors is within the limits specified under the Act and the schedules & rules made there under.

.Section 197: Managerial Remuneration not to exceed 11% of the Net Profit. [Net Profit: Refer Section 198]

.Percentage - exclusive of fees payable to Directors.

.Monthly remuneration to be paid within limits.

.In case of no profits or inadequate profits- Payment shall be made in accordance with the provisions of Part II of schedule V

.In cases of default in payment of dues

.Important Questions:

- a) If AGM is not held for 3-4 years, can the auditor sign all the four balance sheets?
- a) In what manner is the auditor supposed to sign the Balance Sheet?
- a) What should be the date of signing of the auditors?
- a) What is the obligation of the auditor if only one Director signs?
- a) Can the auditor sign in the name of the firm.
- a) Firm registration number.

SIGNING OF BALANCE SHEET

.Date of signing

.Directors who can sign.

.Number of Directors who can sign.

.When do they sign?

CONSTITUTION OF BOARD OF DIRECTORS

.Duly appointed in board / general meeting.

.Has obtained DIN prior to such appointment.

.Is not disqualified u/s 164.

Is not disqualified under additional conditions laid down by AOA.

Declaration about no disqualification and DIN
is
duly given before the appointment.

Additional Directors, Alternate Directors and
Nominee Directors are appointed in
accordance
with the provisions of Sec. 161.

Additional director's regularization in AGM.

Sec. 165(1): Director shall not hold Directorship in more than 20 Companies ; out of which Max. 10 can be Public Companies.

INTEREST OF DIRECTORS

DISCLOSURE OF INTEREST BY DIRECTORS

.For drawing up AS-18 disclosures.

.Relevant Sections:

.184

.189

TRANSACTIONS TO BE DISCLOSED

- a) Purchases of goods
- b) Sale of goods
- c) Purchase of fixed assets
- d) Sale of fixed assets
- e) Rendering of services
- f) Receiving of services
- g) Agency arrangements

a) Leasing or hire purchase arrangements.

b) Transfer of research and development.

c) License agreements relating to Finance.

d)

e) (including loans and equity contributions in
f) cash or in kind).

g) Guarantees and collaterals.

Management contracts including for
deputation of employees.

**And any other transaction carried out
between the related parties.**

Names of related parties and description of relationship

- a) Holding Company
- b) Subsidiaries
- c) Fellow Subsidiaries
- d) Associates
- e) Key Management Personnel
- f) Relatives of Key Management Personnel

TRANSACTIONS WITH PARTIES COVERED U/S 189

.Transactions – unsecured loans, contracts, allotment of shares / convertible securities.

.Amount involved in the transactions.

.Maintenance of register.

.Whether new contracts entered into during
.the year.

.Rate of Interest.

.Regular payment of principal and interest.

.Valuation in case of allotment.

Whether the register maintained u/s 189 is kept open and accessible during the continuance of every AGM.

WHETHER ALL THE T&C'S ARE PRIMA FACIE PREJUDICIAL TO THE INTEREST OF THE COMPANY. (Section 188, 184, 189).

ACCEPTANCE OF PUBLIC DEPOSITS

- .Compliance u/s 2(31), 73, 74, 76 read with Companies (Acceptance of Deposit) Rules, 1975.
- .Default, if any.

MAINTENANCE OF RECORDS U/S 128

- .Applicability
- .Compliance

INVESTMENT BY THE COMPANY

- .Authority given by MOA. (Section 4 and 13)
- .Compliance under Section 187.

LOANS, ADVANCE, GUARANTEES

- .Check applicability to the company.
- .Whether within limits.
- .Compliance under relevant sections.

SECURITY OR CHARGE

.Compliance under Sections 2(16), 77-87.

.certificate of Charge issued by ROC.

.Entry in register of charges.

PLACE OF KEEPING BOOKS OF ACCOUNTS

Section 94, 2(3), 128, 129.

.Change in place of keeping books of accounts.

.Change in registered office.

ANNUAL RETURNS

ANNUAL RETURNS (SECTION 92)

◦Capital of the Company.

◦Details of Directors, Promoters, KMP
and changes therein (if any).

Meetings of Members and Directors along with the
attendance details.

Remuneration of Directors and KMP.

Penalties and Punishments imposed on the
Company and its Directors.

Details regarding compounding of offences and
appeals made.

Details regarding shares held by FII's.

Certification by PCS in case of Listed Companies
and other Companies having paid up capital of
5 crores or more and Turnover of 25 crores or
More.

◦Share transfer to be matched with statutory registers.

◦Amount of indebtedness.

◦Signed by two directors.

◦Extract of annual return shall form part of Board's Report.

AUDIT COMMITTEE

- .Who constitutes?
- .Who presides over it?
- .Number of members
- .Criteria to be a member

COMPOUNDING OF OFFENCES

Sec. 441

- Offences punishable only with fine, can be compounded.
- Any offence which is punishable with imprisonment or fine, or imprisonment or fine or with both shall be compoundable, only with the **permission of special courts.**

Any offence which is punishable under this Act with imprisonment only or with Imprisonment and also with fine, **are not compoundable.**

.Compounding authority depends on quantum of penalty – Regional Director or Tribunal.

.Offences by company and officers covered.

.Fees for composition cannot exceed the maximum fine which may be imposed by the Act for the Offence.

.Compounding for the same offence within 3 years not allowed.

OTHER MATTERS

CIVIL LIABILITY

Damages for Negligence.

.Untrue statement in the Prospectus.

.Loss suffered by company due to Auditor's negligence.

.Liability for misfeasance: - Breach of trust or duty.

CRIMINAL LIABILITY

- .Issuance of prospectus containing untrue statements.
- .Commits acts in furtherance of defrauding or deceiving any person.
- .As a past or present auditor, guilty of an offence in relation to the company.
- .Makes false statement in return, certificate, prospectus or other document.

COMMON ERRORS

.FORMATTING.

.COPY PASTED REPORTS- MINOR MISTAKES OVERLOOKED.

QUERIES????

THANK YOU...!!!