CS Professional

SACMDD

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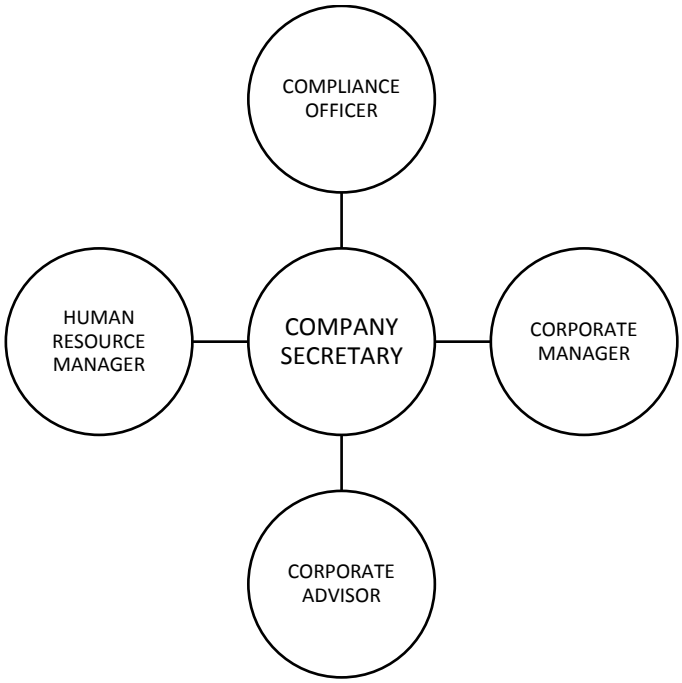
SECRETARIAL AUDIT

INTRODUCTION

With the introduction of the Companies Act, 2013, the importance of Company Secretary in corporate operations is significantly increased.



COMPANIES ACT 2013 AND COMPANY SECRETARY

APPOINTMENT OF C.S.	SECRETARIAL AUDIT	FUNCTIONS OF C.S.
Section 203 & Rule 8/8A of companies (appointment and remuneration of managerial personnel), rules, 2014)	Section 204 & Rule 9 of companies (appointment and remuneration of managerial personnel), rules, 2014)	Section 205 and Rule 10 of companies (appointment and remuneration of managerial personnel) rules, 2014)

MEANING OF COMPANY SECRETARY

- **DEFINITION (Sec 2(24)) :→** Secretary means a company secretary within the meaning of Section 2(1) (c) of the Company Secretaries Act, 1980 **which says,** a company secretary as a person who is a member of the Institute of Company Secretaries of India.

APPOINTMENT OF COMPANY SECRETARY (Sec 203)

- Every listed company and public company having paid up share capital of Rs. 10 Cr. or more shall have whole time KMP. (Rule 8)
- A company other than company covered under Rule 8 having paid up share capital Rs. 5 crore or more is required to appoint a whole time CS.

Note: such appointment shall be done by way of passing board Resolution containing the terms and conditions of the appointment including the remuneration.

Penalty for contravention Section 203

The company shall be punishable with fine **Rs. 1 Lakh to Rs. 5 Lakh** and every director and KMP of the company who is in default shall be punishable with fine minimum Rs. 50 thousand and where the contravention is a continuing one, with a further fine up to Rs. 1000 for every day.

Filling of Various Forms for appointment company secretary

DIR – 12: Within 30 days of their appointment
MGT – 14: Within 30 days of their appointment
MR – 1: Within 60 days of their appointment (NOT REQUIRED FOR APPOINTMENT OF CS, CEO AND CFO)

KMP as an officer in default [Sec 2(59)]

The KMP has also been included in the category of the officer of the company and shall be considered to be in default in complying with any provisions of the Companies Act, 2013.

In addition to the Companies Act, other laws like Income-tax Act, Negotiable Instruments Act, SEBI Act, MRTP Act, FEMA Regulations, Central Excise and Customs Act, etc. have recognized the **secretary as a principal officer** of the company and have placed various responsibilities for compliance by him.

SUMMONS ON COMPANY

Summons to company in civil matters can be served on a secretary as per rule 2 of order 9 of Code of Civil Procedure, in case of suit against a corporation, summons can be served on
1. Company Secretary,
2. Director or
3. Other principal officer of the corporation

By leaving it or by sending by post to registered office of the corporation.

SECRETARIAL AUDIT (Sec 204)

1. Every Listed Company

2. Every public company
   a) Having PSC ≥ Rs. 50 Cr.
   b) Having a T.O. ≥ Rs. 250 Cr.

Shall obtain Secretarial Audit Report Report in MR – 3 from PCS

In case of contravention, every officer in default and PCS shall be liable a penalty of **Rs. 1 Lakh to Rs. 5 Lakh**

Note:

1. **Secretarial audit report shall be annexed with its board's report and any qualification or observation or remarks by the Secretarial Auditors shall be explained in Board Report.**
2. **Co. Act 2013 does not have any specific provision regarding laying of secretarial audit report at the AGM but as an annexure to Board it will be submitted anyway**

IMPORTANT PROVISIONS REGARDING SECRETARIAL AUDIT

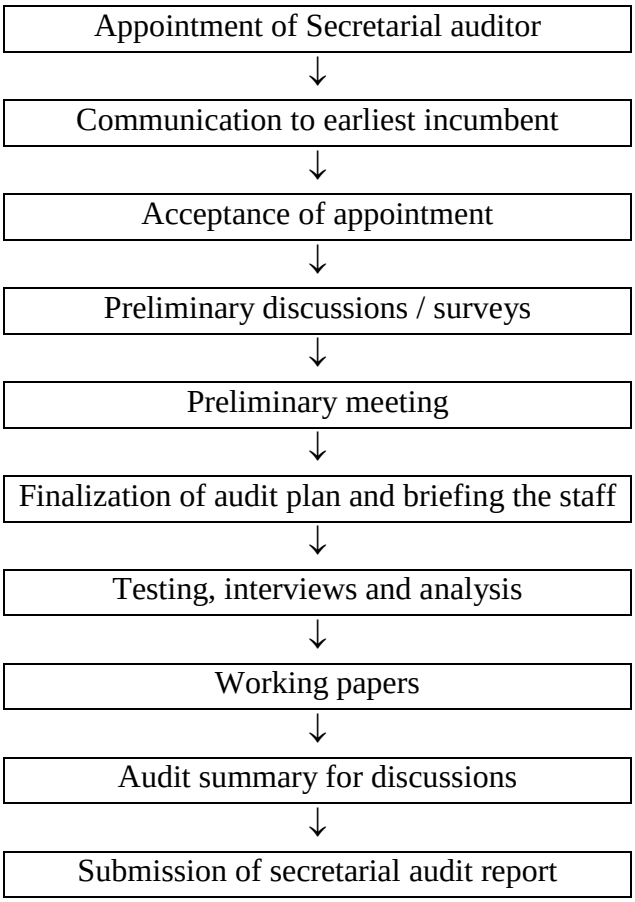
S. No.	PARTICULARS	PROVISIONS
1	Matters to be specified in the Secretarial Audit	**Verification and Report** of compliance of various requirements under the Companies Act and the Rules there under. The PCS should give his Secretarial Audit Report only in respect of matters specified in the **Form MR-3.** If any matter is not applicable, it should also be specified accordingly.
2.	Flexibility in the form of Compliance Certificate	If any information required to be given in the Report does not fit into the format, necessary modifications may be made accordingly in the format of Secretarial Audit Report by the PCS.
3.	Verification of records and documents	1. For issuance of the 1st Secretarial Audit Report, PCS should verify the various ➢ statutory registers, ➢ forms and ➢ other relevant records and documents maintained by the company from the 1st day of the financial year as well as for the previous period for his satisfaction. 2. CSP should also check the proof for filing and receipts obtained from the ROC and other authorities.
4.	Crucial area to check	1. Appointment of the KMP.

	under companies act 2013	2. Information filed with the ROC for change in the promoters & top 10 shareholders. 3. Issuance of share certificate for the shares allotted in the earlier years. 4. Acceptance of deposits from the members and general public. 5. Unsecured loans obtained from the various sources. 6. Loan, given or guarantee or security provides to directors and their related concerns. 7. Approval of contracts in which directors are interested. 8. Appointment in the office or place of profit. 9. Registration of creation, modification and satisfaction of charges. 10. Transfer of amount of dividend in a separate bank account. 11. Payment of dividend. 12. Payment of managerial remuneration, etc.
5.	Crucial area to check UNDER SEBI RULES & REGULATIONS	The Depositories Act, 1996 The SEBI (SAST) Regulations 2011 The SEBI (ICDR) Regulations, 2009
6.	Crucial area to check UNDER other laws	• FEMA, 1999 and the rules and regulations made there under to the extent of FDI, ODI and ECB. • Other laws (as applicable) • All the Secretarial Standards issued by ICSI.
7.	Period of the Secretarial Audit	The Secretarial Audit Report shall relate to the period pertaining to the financial year of the company.
8.	Disqualifications for appointment of the Secretarial Auditors	The Companies Act, 2013 does not provide any disqualifications for the appointment of the Secretarial Auditors. However, it should be considered that the Secretarial Auditor shows **utmost integrity** and **independence of judgment** in the performance of his duties; a person referred to in section 144 of the Act, should not be appointed or re-appointed for giving Secretarial Audit Report to a company.
9.	Duty of the company to provide all assistance	Company shall provide all assistance and facilities to PCS, for auditing the secretarial and related records of the company.
10.	Objectives of Secretarial Audit	➢ To Check & Report on Compliances ➢ To Point out Non-Compliances and Inadequate Compliances ➢ To protect the interest of the Customers, employees, society etc. ➢ To avoid any unwarranted legal actions by law enforcing agencies and other persons as well.

SECRETARIAL AUDIT & COMPANY SECRETARY IN PRACTICE (PCS)

A PCS is considered to be a professional well-versed in matters of statutory, procedural and practical aspects of laws applicable to companies, both listed and unlisted public and private companies. A strong knowledge base makes him a competent professional to conduct Secretarial Audit. In order to provide guidance to its members who are in practice to adopt a robust and efficient process of Secretarial Audit, the ICSI has issued this guidance note.

SECRETARIAL AUDIT – THE PROCESS



SECRETARIAL AUDIT – THE PROCESS IN DETAIL

S.NO.	PARTICULARS	PROVISIONS
1.	Appointment of Secretarial	Secretarial Auditor is required to be appointed by means of

	Auditor [Sec 179 & Rule 8]	Board Resolution at a duly convened Board Meeting.
2.	Communication to earlier Incumbent	Whenever a PCS is engaged as a secretarial auditor in place of an earlier incumbent, he shall communicate to the earlier incumbent about the proposed engagement **in writing** to be sent by registered/ speed post or any other mode of delivery, as may be recognized by the ICSI.
3.	Acceptance of Appointment	A formal letter for appointment should be issued by the company to the secretarial auditor along with the company of the board resolution for appointment. The secretarial auditor shall confirm acceptance of appointment in writing.
4.	Preliminary Discussions/ Surveys	It is important to have relevant information about the company. The secretarial auditor is expected to take general overview of the operations of the company and interact with the personnel involved to know about the nature of the business. He may opt for surveys for generating information about the company.
5.	Preliminary Meeting	The preliminary meeting with the senior management and the administrative staff involved in the audit will give a fair idea of what is expected and the manner in which audit activities are to be undertaken.
6.	Finalization of Audit Plan and Briefing the Staff	It is important to work out an audit plan. The plan involves briefing the audit staff as to a) Allotment of work, b) Fieldwork responsibilities and c) Other roles. The audit plan should comprehensively outline the field work and usage of auditing tools.
7.	Testing, Interviews and Analysis	The secretarial auditor may use a variety of tools and technology to gather information about the company's operations. The secretarial auditor should determine whether the controls identified during the preliminary review are operating properly and in the manner described by the Company.
8.	Working Papers	Working papers are a vital tool of the audit process. They form the basis for expression of the audit opinion. They connect the management's records and information to the auditor's opinion. They are comprehensive and serve many functions.
9.	Audit Summary for Discussions	It is recommended that the findings during the course of audit are summarized and presented for initial discussions

		with the management for their views/ clarifications/ replies.
10.	Submission of Secretarial Audit Report	After considering the clarifications/ replies of the management, the secretarial auditor shall prepare the secretarial audit report in Form MR-3. The report is addressed to the members but is to be submitted to the Board.

BENEFITS AND BENEFICIARIES OF SECRETARIAL AUDIT

The Benefits

- ✓ It can be an effective due diligence exercise for the prospective acquirer of a company or controlling interest or a joint venture partner.
- ✓ It assures the owners that management and affairs of the company are being conducted in accordance with requirements of laws, and that the owner's stake is not being exposed to undue risk.
- ✓ Instilling professional discipline and self-regulations.
- ✓ Reduces the work load of the regulators due to better and timely compliances.

The beneficiaries

- ✓ Promoters
- ✓ Management
- ✓ Non-executive directors
- ✓ Government authorities/ regulators
- ✓ Investors
- ✓ Other Stakeholders

Reporting with Qualification

Qualifications/ reservations or adverse remarks, if any, should be stated by the secretarial auditor at the relevant places in his report **in bold type or in italics.** If the secretarial auditor is unable to express an opinion on any matter, he should mention that he is unable to express and opinion on that matter and the reasons there for.

PROFESSIONAL RESPONSIBILITY & PENALTY FOR INCORRECT AUDIT REPORT

1. PENALTIES UNDER COMPANY SECRETARIES ACT, 1980

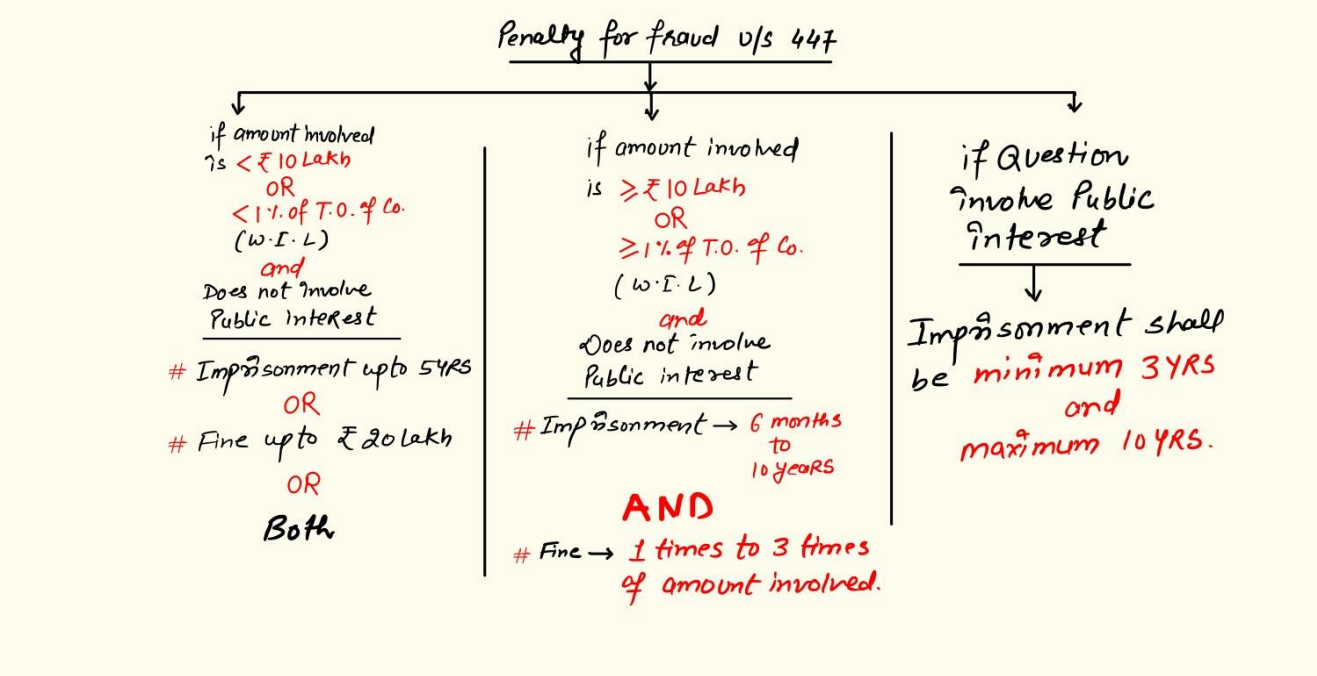
Any failure or lapse on the part of secretarial auditor may attract penalty for incorrect report and disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980.

2. PENALTIES UNDER COMPANIES ACT, 2013 (Sec 448)

If in any return, report, certificate, financial statements, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act or the rules made there under, any person makes a statement,

a) which is false in any material particulars, knowing it to be false or
b) which omits any material fact, knowing it to be material

He shall be liable under section 447 (Fraud)



In view of this, a company secretary in practice will be attracting the penal provisions of sections 448, for any false statement in any material particulars or omission of any material fact in the Secretarial Audit Report. However, a person will be penalized u/s 448 in case he makes a statement, which is false in any material particulars, knowing it to be false, or which omits any material fact knowing it to be material.

FUNCTIONS OF COMPANY SECRETARY (Sec 205)

a) To report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company.
b) To ensure that the company complies with the applicable secretarial standards
c) To discharge such other duties as may be **prescribed under Rule 10**.

RULE 10 OF COMPANIES (Appointment & Remuneration of Managerial Personnel) RULES, 2014

The duties of Company Secretary shall also discharge, the following duties, namely:

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 meeting, the government and such other authorities as required under the provisions of the Act;
4. To represent before various regulators, and other authorities under the Act in connection with discharge of various duties 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.

LIMITS ON SECRETARIAL AUDIT

Limits for the issue of Secretarial Audit Reports for financial year 2016-17 onwards

The council of the ICSI at its 235th meeting held on February 11, 2016 reviewed the existing limits for the issue of Secretarial Audit Reports and decided as below:

- 10 Secretarial Audits per partner/ PCS, and
- An additional limit of 5 secretarial audits per partner/ PCS in case the unit is peer reviewed.

These limits will be applicable for the Secretarial Audit Reports to be issued for the financial year 2016-17 onwards.

Annual Return

A member of the ICSI holding a valid certificate of practice (COP) shall be entitled to certify Annual Return u/s 92(2) of the Companies Act, 2013 for **not more than 80 companies** for each of the financial year under consideration.

To sign Annual Return u/s 92(1) of the Companies Act, 2013 for any number of companies, for each of the financial year under consideration.

PREVIOUS YEAR QUESTIONS AND ANSWERS

1. Sunil is a Company Secretary holding certificate of practice. He has accepted the assignment of secretarial audit of XYZ Ltd. For the financial year ended 31st March, 2015. He received the notice of his assignment of 15th April, 2016 and signed the audit report on 30th June, 2016. It is noticed that Sunil ceased to be a Company Secretary in practice from, 1st June, 2016. Examine the validity of the report dated 30th June, 2016 signed by Sunil.

Ans:

The Board appointed Mr. Sunil as Secretarial Auditor. He was company secretary holding certificate of practice. While Sunil received the notice on 15th April 2016 he was practicing company Secretary where as on the date of signing of Audit Report he was not company secretary in practice in terms of Company Secretary Act, 1980. Hence report submitted as company secretary in practice was not valid.

2. While conducting the secretarial audit of Rainbow Pharmaceuticals Ltd., it came to notice that a Board meeting held on 24th March, 2011 was convened and conducted by Jagat alone as a director of the company. On enquiry, it was found that except Jagat, all other directors of the company had resigned and in order to constitute the quorum and to carry out the business activities, 2 additional directors were appointed with immediate effect in the said single director Board meeting. Decide the validity of the Board meeting held on 24th March, 2011.

Ans.

As per Section 174 of the Companies Act, 2013 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 purpose.

Hence the board meeting would be considered valid and the appointment of two additional directors will also be valid. However, decisions if any taken in that board meeting other than the constitution of the board would be considered null and void even if it is in the interest of the company.

3. Write notes on the Secretarial audit and what are its objectives?

4. In what way can the secretarial audit be used as a tool for good governance of companies?

5. Bright Vision Ltd. Wishes to appoint a secretarial auditor prepare a brief note for the Chairman of the company about the prerequisites for carrying out a secretarial audit.

6. You are working as the whole-time company secretary in a large listed company draft a note to the Audit Committee of the Board highlighting the need for the appointment of Secretarial Auditor in the company.

Ans:

To the Audit committee of the board of directors ABC

Need for appointment of secretarial Audit

Need for Secretarial audit

Secretarial Audit is the process of independent verification, examination of level of compliance of applicable corporate laws to a company. The audit process if properly devised ensures timely compliance and eliminates any un-interred non compliance of various applicable rules and regulations, an action plan of the corporate secretarial department is to be designed so as to ensure that all event based and time based compliances are considered and acted upon. Secretarial Audit is to be on the principle of "Prevention is better than cure" rather than post mortem exercise and to find faults.

Broadly the need for Secretarial Audit is:

1. Effective mechanism to ensure that the legal and procedural requirements are duly complied with.
2. Provides a level of confidence to the directors, officers in default, key managerial personnel etc.
3. Directors can concentrate on important business matters as Secretarial Audit ensures legal and procedural requirements.
4. Strengthen the image and goodwill of a company in the minds of regulators and stakeholders
5. Secretarial Audit is an effective compliance risk management tool.
6. It helps the investor in analyzing the compliance level of companies, thereby increases the reputation.
7. Secretarial Audit is an effective governance tool.

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SECRETARIAL AUDIT

SECRETARIAL AUDIT

Secretarial Audit is compliance audit. It is a part of total compliance management in an organization. The Secretarial Audit is an effective tool for corporate compliance management. It helps ensure timely corrective measures when non-compliance is detected.

Following are the checklist under Companies Act 2013 for Secretarial Audit.

ALTERATION OF MEMORANDUM OF ASSOCIATION (MOA)

Check whether

1. The company has **passed the special resolution** and filed **MGT. 14** as per Companies (Management and Administration) Rules, 2014.
2. The company has altered its name with the **approval of Central Government.**
3. The company has obtained fresh certificate of incorporation (COI) from the ROC in Form No. INC. 25 as per Companies (Incorporation) Rules, 2014.
4. The company has shifted the registered office from one state to another state, with the approval from the Central government.
5. The company has raised money from public through prospectus and still has any unutilized amount out of the money so raised, and if so, a special resolution has been passed by the company **AND**

- The details, were published in the newspaper (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and was placed on the website of the company, indicating there in the justification for such change.
- The dissenting shareholders have been given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

ALTERATION OF ARTICLES (AOA)

Check whether

1. The company has passes special resolution with respect to alteration of AOA and has filed **Form MGT 14**.
2. In case of the conversion of a private company into a public company or vice versa, the application was filed in **Form No. INC. 27**
3. A copy of order of the competent authority approving the alteration has been filed with the ROC in **Form No. INC. 27** together with the printed copy of the altered AOA **within 15 days** of the receipt of the order from the competent authority.
4. Provision for entrenchment has been made by alteration of AOA, with the consent from all the members/ by passing special resolution.

ISSUE OF SHARES AND OTHER SECURITIES

Private Placement U/S 42 (Read with Companies (Prospectus and Allotment of Securities) Rules, 2014

Check the following compliances

1. To ensure that persons to whom offer may be made not to exceed 200 in a financial year for each kind of security.
2. No allotment against any previous offer/ invitation of any kind of security is pending.
3. Company has passed special resolution for each offer/ invitation (except in case of NCDs, where one resolution in a year for all offers during the year is sufficient).
4. Explanatory statement contains justification for price and premium, if any.
5. Issue a private placement offer letter was in **Form PAS-4.**
6. Requirement of private placement offer letter-
   a) Was accompanied by serially numbered application form
   b) Addressed specifically to the person to whom offer is being made
   c) Sent to only such person in writing/ electronically
   d) Within 30 days of recording names in the list
   e) No person other than the addressee was allowed to apply through application form.
   f) Value of offer/ invitation per person was not less than Rs. 20,000 of face value of the security.
7. Private placement was offered to such persons whose names are recorded prior to the invitation to subscribe.
8. The Company has maintained record of offer letters in **Form PAS-5.**
9. Company has filed offer letter with ROC along with record of offer letters within 30 days of circulation of offer letter.
10. Amount against offer to be received only by cheque / demand draft / other banking channels but not by cash – only from the bank account of the subscriber.
11. Company to maintain record of the bank account from which payments received.
12. In case of joint holders, payment was received from 1st Applicant only.
13. Allotment was completed within 60 days from date of receipt of application form. If not, application money repaid within 15 days of completion of earlier 60 days. If not repaid, the application money along with interest @ 12 % p.a. from expiry of 60th day was paid.
14. Company filed Return of allotment in form PAS-3 within 30 days.
15. Share certificates were issued within 2 months of allotment of shares/ 6 months of allotment of debentures.
16. Company has made entry in Register of Members.

PREFERENTIAL ALLOTMNET U/S 62

Applicable to Private and Public Company

Kinds of securities covered

1. equity shares,

2. fully convertible debentures,
3. partly convertible debentures,
4. any other security which would be convertible into equity shares at a later date

Whenever a company wants to increase its subscribed capital:
It shall allot further shares to

1. Existing equity shareholders in proportion to the paid up share capital held by them.
   a. Letter of offer to be sent to existing equity shareholders as notice by registered post/ speed post/ electronic mode **at least 3 days before** opening of the issue.
   b. Contents of letter of offer:
      i. Specify number of shares offered
      ii. Time limit of **minimum 15 and maximum 30 days** from date of offer within which the offer if not accepted, was deemed have been declined
      iii. Offer shall include a right exercisable by person concerned to renounce the shares offered to him in favour of any other person concerned to renounce the shares offered to him in favour of any other person
   c. On expiry of period/ renunciation, Board disposed of the shares in a manner not disadvantageous to the company and shareholders.
2. Employees under ESOP Scheme; subject to prior Special Resolution.
3. **Any persons;**
   (1) subject to prior Special Resolution;
   (2) either for cash or for consideration other than cash,
   (3) if price is determined by valuation report of registered valuer.

This section does not apply where increase in subscribed capital is caused by exercise of option to convert debentures/ loan into shares of the company provided terms of issue of debentures/ loan have been approved by special resolution before issue of debentures/ raising of loan.

Procedure for issue of shares to any persons other than existing equity shareholders u/s 62 (1) (c) (taking into account procedure U/S 42 also)

1. Prepare a list of persons (not exceeding 200 in a FY for each kind of security) to whom offer may be made.
2. Ensure that no allotment against any previous offer/ invitation of any kind of security is pending.
3. Issue to be authorized by AOA.
4. Pass **special resolution** for such issue.
5. Explanatory statement to contain justification for price and premium, if any and also other matters as prescribed by the rules.
6. Determine issue price by valuation report of registered valuer/ independent merchant banker/ independent CA.
7. Only fully paid securities can be issued.
8. Issue an offer letter in form PAS-4.

9. Requirements of Offer letter
   a) To be accompanied by serially numbered application form
   b) Addressed specifically to the person to whom offer is being made
   c) Sent to only such person in writing/ electronically
   d) Within 30 days of recording names in the list
   e) No person other than the addressee allowed to apply through application form
   f) Value of offer/ invitation per person not less than Rs. 20,000 of face value of the security
   g) To also comply with requirement of contents of notice about renunciation etc.

10. Maintain record of offer letters in PAS-5.
11. File offer letter with ROC along with record of offer letters **within 30 days** of circulation of offer letter.
12. Amount against offer to be received only by cheque/ demand draft/ other banking channels but not by cash – only from the bank account of the subscriber.
13. Company to maintain record of the bank account from which payments received.
14. In case of joint holders, payment was received from first applicant only.
15. Allotment was completed **within 12 months** from date of passing special resolution. If not, another special resolution was passed to complete allotment.
16. Where convertible securities are offered, price of resultant shares shall be determined beforehand on basis of valuation report.
17. Board resolution to specifically contain authority for issuance of share certificates to 2 directors and CS/ one authorized person. One of the two directors should be director other than MD/ WTD.
18. Share application money was kept in separate bank account and was utilized only for (a) adjustment against allotment or (b) repayment.
19. Return of allotment in form PAS-3 within 30 days.
20. Share certificates to be issued within 2 months of allotment of shares/ 6 months of allotment of debentures.
21. Entry in Register of Members.
22. In case of consideration other than cash, accounting treatment as specified in Rules, was complied.

In case a change is required to be created in connection with the issue of the securities, check if the same has been done in accordance with the provisions of the Act and other applicable legal requirements and prescribed returns have been filed.

BONUS ISSUE (SECTION 63)

1. Check whether it is authorized by its AOA;
2. Whether it has, on the recommendation of the Board, been authorized in the GM of the company;
3. Whether the company has defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
4. Whether it has defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

5. Whether the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
6. Ensure that the company which has once announced the decision of its Board recommending a bonus issue does not subsequently withdraw the same;
7. Check whether Return of allotment is filed with the ROC in Form PAS.3

Issue of Sweat Equity Shares

1. Section 2(88) defines **"sweat equity shares"** so as to mean such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.
2. In case of Listed Company, ensure that the issue of Sweat Equity Shares is in compliance with the SEBI (Issue of Sweat Equity) Regulations, 2002.

In case of an unlisted company Check whether

1. The issue is authorized by a special resolution passed by the company, ensuring that the SR authorizing the same is valid for making the allotment within maximum 12 months from the date of passing of the SR.
2. At the date of such issue, At least 1 year elapsed since the date on which the company had commenced business.
3. The company has not issued sweat equity shares for more than 15% of the existing paid up equity share capital in a year or shares of the issue value of Rs. 5 Cr., whichever is higher. Further it is to be ensured that the issuance of sweat equity shares in the Company has not exceeded 25%, of the paid up equity capital of the Company at any time.
4. The company is maintaining Register of Sweat Equity Shares in Form No. SH-3
5. The Register of Sweat Equity Shares is maintained at the registered office of the company or such other place as the Board may decide.
6. The entries in the register are authenticated by the Company Secretary of the company or by any other person authorized by the Board for the purpose.

Calls on Shares/ Debentures

Check whether

1. Call on shares/ debentures was made by the BOD by means of resolutions passed at the BM;
2. Call on shares/ debentures complied with the stipulations contained in the AOA;
3. The BOD approved the rate of interest payable on delayed payment of calls in conformity with the provisions contained in the AOA.

Employee Stock Option under Companies Act, 2013 and Rules made thereunder

For private and unlisted public companies

The Companies Act, 2013 lays down the provisions for issue of ESOP u/s 62 (1) (b) & Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014.

A PCS is required to verify the following:

1. Whether the company has passed the special resolution as required u/s 62 (1) (b).
2. If passed, check the copy of the SR for approving the scheme of ESOP.
3. Check whether SR has been filed with ROC in Form No. MGT-14 as per Companies (Management and Administration) Rules, 2014.
4. Check that the explanatory statement to the notice of the meeting contains the disclosures required to made under the sub-rule 2 of rule 12 of Companies (Share Capital and Debentures) Rules, 2014.
5. Check that the Director's Report contains the disclosures required to be made in such report under sub-rule 9 of the rule 12 of Companies (Share Capital and Debentures) Rules, 2014.
6. Verify the Register of ESOP maintained in Form No. SH - 6 of Companies (Share Capital and Debentures) Rules, 2014 and that the register is duly authenticated by the CS of the company or by any other person authorized by the BOD.

Debentures

An issue of secured debentures may be made, provided the date of its redemption has not exceed 10 years from the date of issue.

Where the company is engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding 10 years but not exceeding 30 years (Rule 18 Companies (Share Capital and Debentures) Rules, 2014.

Check whether

1. The company has appointed a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders.
2. A trust deed in Form No. SH-12 or as near thereto as possible has been executed by the company issuing debentures in favour of the debenture trustees within 3 months from closure of issue.
3. The company has created a Debenture Redemption Reserve (DRR) for the purpose of redemption of debentures.

Issue and redemption of preference shares (Section 55)

Check whether

1. A company is authorized by its AOA to issue preference shares;
2. The issue of preference shares has been authorized by passing a SR in the GM of the company;
3. The company, at the time of such issue of preference shares has no subsisting default in the redemption of preference shares issued either before or after the commencement of the Act or in payment of dividend due on any preference shares.
4. The AOA of the company has set out the following matters relating to preference shares:
   a. Priority with respect to payment of dividend or repayment of capital vis-à-vis equity shares;

b. Participation in surplus dividend;
c. Participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;
d. Payment of dividend on cumulative or non-cumulative basis.
e. Conversion of preference shares into equity shares.
f. voting rights;
g. Redemption of preference shares.

TRANSFER AND TRANSMISSION OF SHARES AND OTHER SECURITIES AND RELATED MATTERS

Issue of Certificates for Shares and other Securities

Check whether

1. The company has allotted shares/ debentures and entered the names of allottees in the register of members / debenture holders;
   Note: where the register and index of beneficial owners is maintained by a depository it shall be deemed to be corresponding to the register of members
2. The company has issued and delivered shared certificates u/s 46 of the Act;
3. The company has executed Debenture Trust Deed in case of secured debentures;
4. The company has complied with delivery of certificates within the time limits prescribed u/s 56(4).
5. Proper stamp duty has been paid.

TRANSFER AND TRANSMISSION OF SHARES

Transfer of Shares

Check whether

1. The requirements contained in the AOA have been complied with;
2. The transfer of shares/ debentures and the issue of certificates thereof have been made within the stipulated time u/s 56 in accordance with the procedures prescribed;
3. The company receives instrument of transfer in form SH-4 in respect of physical form of securities.
4. An application has been made in respect of partly paid up shares of the company. If yes, the company has given notice of application in form SH-5 to the transferee and received NOC to the transfer.
5. All transfers have been properly included in the Annual Return.
6. The company has taken indemnity in respect of instrument of transfer that has been lost or not delivered within the prescribed limit.
7. Entries in the register of transfers have been made from time to time.

Transmission of shares

Check whether

1. The shares have been transmitted to the legal representative of the deceased shareholder in the case of death of a sole shareholder and in the case of joint holdings only to the survivor(s);

2. Transmission of shares is effected upon the production of succession certificate or probate or letter of administration or indemnity duly signed by the legal heirs of the deceased or as per procedure stipulated by the BOD & / or AOA.

DEPOSITS

Check Whether

1. The Company has not accepted any deposits which is repayable on demand or upon receiving a notice within a period of **less than 6 months or more than 36 months** from the date of acceptance or renewal of deposit. If, accepted so, the company has complied with the conditions prescribed in Rule 3.
2. The company has issued circular to all its members by registered post acknowledgement due or speed post or by electronic mode in Form DPT-1, while intending to invite deposits from them.
3. The company, being an eligible Company as defined under the Rules, has issued circular in the form of advertisement in Form DPT-1.
4. Whether the company filed Return of deposits with the ROC in form DPT-3.
5. The company (accepting deposits from members or eligible companies) has entered into a contract for providing deposit insurance as prescribed in Rule 3.
6. The company has executed deposit trust deed in **from DPT-2 at least 7 days** before circular or advertisement.

Meetings of directors/ committees

Check whether

1. The requisite number of Board meetings as required u/s 173 the Act were held during the year.
2. Notice of each BM in writing was issued to all the directors;
3. Attendance records are maintained and the requirements of BM regarding quorum, chairman, minutes etc., have been complied with and leave of absence is granted to Directors who have requested for the same;
4. The items required to be transacted only at the meeting of the Board were transacted at the meeting.
5. Every director has disclosed his interest at the Board meeting where transaction is considered in which he is directly or indirectly interested and the interested director has abstained from participating or voting at such meeting;
6. The notices of disclosure of general interest u/s184 have been received from all the directors and were, placed before and read at the 1st BM in each year;
7. Entries thereof have been made in the Register of Contracts or arrangements in which Directors are interested in pursuance to section 189 and noted by the Board and such disclosures have been renewed every year;
8. If the Board has constituted any committees; whether requirements regarding quorum, chairman, minutes etc., of committee meetings were duly complied with;

9. Resolutions by circulation have been approved in accordance with the provisions of the Act and in cases where it was required by the requisite number of Directors to be taken up at a Board meeting, whether the same has been taken up at a Board meeting;
10. The resolutions passed by circulation were put up at the next BM for taking note of the same and has been made part of the minutes;
11. All directors have given a declaration in Form DIR-8 about their not being disqualified to act as a Director at the beginning of each financial year and such declarations have been placed before the Board and taken note of;
12. Independent Directors have given declaration about their status;
13. The director has attended at least one board meeting in a year either in person or through video-conferencing;

Minutes Book of Meetings of Directors

Check whether

1. All appointments made at the meeting are included in the minutes.
2. Names of the directors who are present at the meeting are recorded in the minutes.
3. Names of the directors dissenting from or not concurring were recorded
4. Secretarial Standard viz. SS1, SS2 have been complied with.
5. The pages of the minute book have been consecutively numbered.
6. Each page of minutes of proceedings of a meeting of the Board or of a committee thereof are initialed or signed and the last page of the record of proceedings of each meeting is dated and signed by the chairman of the said meeting or the chairman of the next succeeding meeting.
7. Each page of minutes of proceedings of a general meeting are initialed or signed and the last page of the record of proceedings of each meeting is dated and signed by the chairman of the same meeting or within the aforesaid period of 30 days.
8. The minute books of general meetings, and the minute's books of the Board and committee meetings are maintained in the custody of the CS or any director duly authorized by the BOD.
9. In case directors have participated in any Board Meeting by video conference or other audio-visual means whether they have complied with the checklist in the below checklist.

Meetings of Board through video conferencing or other audio-visual means Check whether

1. The company has made necessary arrangements to avoid failure of video or audio-visual connection.
2. Sufficient security and identification procedures were ensured for safeguard the integrity of the meeting by the Company Secretary/ Chairman.
3. The Chairman/ Company Secretary has taken Reasonable care 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 authorized participants at the Board meeting;
4. Proper arrangements were made to record proceedings and prepare the minutes of the meeting;

5. Proper arrangements were made 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.
6. Proper system security and physical security arrangement were made 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
7. Participants attending the meeting through audio visual means were able to hear and see the other participants clearly during the course of the meeting;
8. The differently abled people were allowed to accompany them on their request.
9. The notice of the meeting was sent to all the directors in accordance with the provisions of section 173(3) of the Companies Act, 2013.
10. The notice of the meeting contained the information regarding the option available to the directors to participate through video conferencing mode or other audio visual means, and provided all the necessary information to enable them to participate through video conferencing mode or other audio visual means.
11. The intention of the director intending to participate through video conferencing or audio visual means was received by the Chairperson or the company secretary of the company well in advance (preferably in the beginning of year) so as to enable them to make proper arrangement in this behalf.
12. At the commencement of the meeting, a roll call was taken by the Chairperson when every director participating through video conferencing or other audio visual means stated the following namely:
    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);
13. After the roll call, the Chairperson or the Company Secretary informed 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 confirmed that the required quorum is complete.
14. The required quorum was present throughout the meeting.
15. The participating Directors had given their consent for recording of their signature electronically in the register to be signed by them and it is recorded in the minutes.
16. The participating directors introduced him at the time of speaking on any agenda item and in case of any interruption, the director repeat or reiterate his statement.
17. In case of an objection on a motion, roll call was made by the Chairperson and vote of each director is recorded only on identification by the director.
18. At the end of discussion on each agenda item, the Chairperson of the meeting announced 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. The minutes of the meeting has disclosed the particulars of the directors who attended the meeting through video conferencing or other audio-visual means.

19. The draft minutes of the meeting was circulated among all the directors **within 15 days** of the meeting either in writing or in electronic mode as may be decided by the Board.
20. Every director who attended the meeting, whether personally or through video conferencing or other audio-visual means, has confirmed or given his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, **within 7 days** or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
21. After completion of the meeting, the minutes had been entered in the minute book as specified u/s 118 of the Act and signed by the Chairperson.
22. None of the following matters were dealt with in the meeting held through video conferencing or other audio visual means:
    - the approval of the annual financial statements;
    - the approval of the Board's report;
    - the approval of the prospectus;
    - the Audit Committee Meetings for consideration of accounts; and
    - the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

ANNUAL GENERAL MEETING
Notice, Conduct of the meeting and minutes

Annual General Meeting

Check whether

1. The provisions of section 96 of the Companies Act read with the Companies (Management and Administration) Rules, 2014, Listing Agreement, if applicable, etc. have been complied with.
2. The 1st AGM is held within a period of 9 months from the date of closing of the 1st financial year of the company.
3. Subsequent AGM was held in each case, within a period of 6 months from the date of closing of the financial year and the meeting was held within 15 months of meeting last held.
4. AGM was called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.
5. The AGM was 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.
6. Notice convening the meeting specifically mentioned that it was AGM.
7. Extension for holding the meeting was obtained from the Registrar.
8. Meeting was not held on a National Holiday.
9. In case of requisition meeting provision of section 100 were complied with.
10. Notice of **21 clear days** was given for the meeting.
11. **Consent of at least 95% of the members** was obtained for convening the meeting for shorter notice.

12. Day, Date and hour of the meeting was mentioned in the meeting along with the statement of business to be transacted.
13. Notice was given to
    a. Every member/ assignee of insolvent member/ legal representative of the deceased member
    b. Auditor
    c. Director
14. Explanatory statement setting out material facts was attached to the notice in respect of special business u/s 102.
15. Appropriate quorum i.e. 2 in case private company **AND** 5/15/30 in case of public company was present at the meeting.
16. Meeting was adjourned for want of quorum and was held as per section 103(2).
17. Chairman of the meeting was elected by the members on show hands/ poll.

DIVIDEND

Check whether

1. The company has paid dividend **within the 30 days** from date of declaration.
2. The company has transferred the total amount of dividend which remains unpaid or unclaimed within 30 days from the date of declaration to unpaid dividend account, **within 7 days** from the expiry of the said 30 days.
3. The company has prepared a statement containing the names and other details to whom the unpaid dividend is to be paid along with the amount of unpaid dividend and place the same on the website of the company **within 90 days.**
4. The rate of dividend declared has not exceeded average rate of dividends by **3 years preceding** the year.
5. The company has not declared and paid any dividend from reserves other than free reserves.
6. The company has deposited the dividend in a SCB in separate account **within 5 days** from the date of declaration.
7. The dividend is paid by the company by cheque or warrant or an electronic mode.
8. The company has transferred required percentage of profits to reserves before declaration of dividends.
9. The company has filed the Statement of amounts to be credited to **IEPF in Form DIV-5.**
10. The company has followed the procedures prescribed in Rule 3 before the dividend is declared out of reserves (as applicable).

DIRECTORS AND KEY MANAGERIAL PERSONNEL ("KMP")

Check whether

1. The number of directors is as per the provisions of section 149 of the Act.
2. Under Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014), the company has appointed **at least one-woman director**, if the company falls under following category –

i. A listed company;

ii. Other public company having-

a. PSC ≥ Rs. 100 Cr.; or
b. T.O. ≥ Rs. 300 Cr.:

3. Company being the listed company has **at least 1/3rd of the total number of directors** as independent directors.
4. If the company falls under the following class or classes of companies, whether the company has at least 2 directors as independent directors –
i. the Public Companies having **PSC ≥ Rs. 10 cr**.; or
ii. the Public Companies having **Turnover ≥ Rs. 100 cr**.; or
iii. the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, **exceeding Rs. 50 Cr.**
5. In case it is a listed company, whether it has any director elected by small shareholders and if so, whether such appointment is in compliance with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014).
6. The company is following the provisions for determination of office of directors by retirement by rotation (Section 152).
7. The company has ensured the eligibility of directors for election to the office of a director (Section 160).
8. The appointment of additional director, alternate and nominee director, filling up of casual vacancies has been done as provided in section 161.
9. The company has ensured that the appointment of directors is voted individually (Section 162).
10. The company has received the consent to act as directors (Section 152) and **form DIR-2** was filed for appointment of director.
11. None of the directors is disqualified from continuing to be a director (Section 164).
12. None of the directors has vacated office during the year (Section 167).
13. The provisions of section 168 were complied with at the time of resignation of director.
14. None of the directors was removed from the board.
15. If the company is either a listed company or any other public company having a **PCS ≥ Rs. 10 Cr.,** if yes, it has appointed whole-time KMP and filed a return as per DIR-12 with ROC **within 30 days of** such appointment or of any changes therein.
16. Appointment is made by a **board resolution.**
17. If the company has appointed a Manager or WTD, whether it has complied with the provisions of Chapter XIII of the Act read with Schedule V.
18. Whether the company has complied with section 203 with respect to appointment of a manager or managing director.
19. Check whether the provisions relating to appointment and remuneration of Managerial Persons are complied u/s 196, 197, 203 and Schedule V.
20. Ensure that the total managerial remuneration payable by a public company does not exceed **11% of the net profits** of the company and where the limit is exceeded, the same is approved in general meeting and approved by the CG. It must be noted that if a company has no profits or when its profits are inadequate, the company shall pay no remuneration to its directors, except in accordance with schedule V.

21. Ensure that the procedural aspects relating to appointment of MD or WTD or manager including the filing of the necessary return are complied with.

Resignation of director

Check whether

1. The letter of resignation of the director is received by the company.
2. The Board takes not of the resignation and intimate the **ROC** in **Form DIR-12 within 30 days** from the date of receipt of notice of resignation.
3. The information about the resignation is posted on the website of the company, if any.

Retirement of Directors

Check whether

1. **1/3rd of such directors** for the time being as are liable to retire by rotation, or if their number is not 3 or a multiple of 3, then, the number nearest to 1/3rd, retired from office at 1st AGM and at every subsequent AGM;
2. The directors retiring by rotation are those who have been longest in office since their last appointment;
3. Between directors appointed on the same day, the retirement was, in default of and subject to any agreement among themselves, determined by draw of lots;
4. The company has filled up such vacancy by appointing the retiring director or some other person;
5. The director has expressed his willingness for his reappointment;
6. The provisions of the Act, AOA and other applicable rules have been complied with.

Removal of Director

Check whether

1. A **special notice** as required u/s 169(2) was given to the company to remove a director.
2. The company has sent forthwith a copy thereof to the director concerned and the director was provided opportunity to be heard on the resolution at the meeting.
3. The representation, if any, made by concerned director was notified to the members on the request of the director along with the notice of the resolution.
4. A copy of the representation was not sent because the same was received too late or because of company's default, it was read out at the meeting.
5. The director who was removed from office was not reappointed as a director by the BOD.

LOANS, INVESTMENTS, GUARANTEES AND SECURITIES (SECTION 186)

Check whether

1. The board resolution/ special resolution has been passed with respect to loans and investments by the company.
2. The company cannot make investment through more than 2 layers of investment companies.

3. The company has not defaulted repayment of deposit while granting loans/ giving guarantee/ providing security.
4. The company has disclosed financial statements the full particulars of the loans given investment made or guarantee given as prescribed under the Act.
5. The company maintains register containing such particulars in **form MBP-2** at the registered office of the company
6. The company has obtained prior approval of the public financial institution if term loan is subsisting.

REGISTERS, FILING OF FORMS, RETURNS AND DOCUMENTS

Register of sweat equity shares (Section 54) read with Rule 8 of Companies (Share Capital and Debentures), Rules, 2014

Check whether

1. The company has maintained a Register of Sweat Equity Shares in Form No. SH-3 in accordance with Companies (Share Capital and Debentures) Rules, 2014.
2. The Register of Sweat Equity Shares is maintained at the registered office of the company or such other place as the Board may decide.
3. Whether the entries have been made forthwith.
4. The entries in the register are authenticated by the CS of the company or by any other person authorized by the Board for the purpose.

Register of Employee Stock Option (Section 62(1)(b)} {Rule 12 of Companies (Share Capital and Debentures), Rules, 2014}

Check whether

1. The company has maintained a Register of Employee Stock Options in **Form No. SH.6** in accordance with Companies (Share Capital and Debentures) Rules, 2014.
2. The Register of Employee Stock Options has been maintained at the registered office of the company or such other place as the Board may decide.
3. Whether the entries have been made forthwith.
4. The entries in the register are authenticated by the CS of the company or by any other person authorized by the Board for the purpose.

Register of Deposits [Companies (Acceptance of Deposits) Rules, 2014]

Check whether

1. The company has entered in the register, the entries specified u/r 14 of these rules.
2. The company has entered the particulars in the register within seven days from the date of issuance of the receipt, in accordance with the aforesaid rules.
3. The aforesaid receipt is duly authenticated by a director or secretary of the company or by any other officer authorized by the Board.
4. The register is preserved in good order for a period of **not less than 8 years** from the financial year in which the latest entry is made in the register.

Register of Charges (Section 85)

Check whether

1. The company has maintained register of charges as per **Form CHG-7**.
2. The register contains particulars of all the charges registered with the ROC on any of the property, assets or undertaking of the company.
3. The register contains the particulars of the property acquired subject to a change as well as particulars of any modification of a charge and satisfaction of charge.
4. The register is maintained at the registered office of the company and is preserved since incorporation of the company.
5. Entries in the register are authenticated by a director or the secretary of the company or any other person authorized by the Board.

Register of Members (Section 88)

Check whether

1. The company having share capital has maintained register of members as per **Form No. MGT.1**.
2. The Register contains particulars as mentioned in the aforesaid rules.
3. The company maintains register of debenture holders or any other security holders as per **Form No. MGT.2**.
4. Aforesaid Registers are maintained at the Registered office of the Company.
5. If the aforesaid registers are maintained at some other place in which more than $1/10^{th}$ of the total members entered in the register of members reside or some other place within the city where registered office is situated, whether a special resolution has been passed.
6. An index of members is maintained by the company, when the number of member is equal to or more than fifty.
7. Every change is incorporated **within 7 days** of such change.
8. The entries in the aforesaid registers index included therein are authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose, and the date of the board resolution authorizing the same is mentioned therein.
9. The company has made a note of the declaration received in **Form MGT.4** in duplicate, W.R.T. beneficial interest in any shares, in the register of members.
10. The company has filed Form No. MGT.6 with the ROC **within 30 days** from the date of receipt of aforesaid declaration.

Minutes Book of Meetings (Section 118 & Rule 25 of the Companies (Management and Administration) Rules, 2014)

Check whether

1. Minutes book has been maintained in respect of:
   a) General meetings of the members;
   b) Meetings of the creditors.
   c) Meetings of the Board; and
   d) Meetings of each of the committees of the Board.

Resolution passed by postal ballot are recorded in the minute book of GM.

2. The pages of the minute book have been consecutively numbered.
3. Each page of minutes of proceedings of a Board Meeting or of a committee thereof is initialed or signed and the last page of the record of proceedings of each meeting is dated and signed by the chairman of the said meeting or the chairman of the next succeeding meeting.
4. Each page of minutes of proceedings of a general meeting is initialed or signed and the last page of the record of proceedings of each meeting is dated and signed by the chairman of the same meeting **within 30 days.**
5. The minute books of general meetings, and the minute books of the Board and committee meetings are maintained in the custody of the company secretary or any director duly authorized by the board.
6. In case of a listed company or a company having **not less than 1000 shareholders**, whether the company has provided e-voting facilities to its members to exercise their vote at GM and if so, whether Rule 20 of the Companies (Management and Administration) Rules, 2014 has been complied with.

Periodical Returns: Annual Return (section 92)

Check whether

1. The company has filed annual return **within 60 days** from the date of holding of the AGM or **within 60 days** from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM, if the AGM has not been held.
3. The annual return is prepared in **Form No. MGT-7**.
4. In case company does not have a company secretary the annual return signed by PCS.
5. In case of a listed company or a company having PSC ≥ Rs. 10 Cr. **OR** T.O. ≥ Rs. 50 cr., the annual return is certified by a PCS and the certificate is in **Form No. MGT-8.**
6. The extract of the annual return is attached to the Board's report in **Form MGT-9**

Annual Report containing the Financial statements (Section 137)

Check whether

1. The company has filed financial statements duly adopted at the AGM of the company, **within 30 days** of the date of AGM.
2. The company has filed the financial statements with the ROC together with **Form AOC-4**.
3. Whether the company falls in the class of companies notified by the CG from time to time to mandatorily **file their financial statement in XBRL format**, and if yes, whether it has been filed in such manner.
4. Financial statements even if not adopted by members have been filed **within the 30 days** from the date of AGM.
5. After the holding of adjourned AGM, adopted financial statements are filed **within 30 days of the date of adjourned AGM**.

Report on Annual General Meeting (section 121)

Check whether

1. In case of a listed company, it has filed with the ROC in **Form No. MGT.15,** the report on the AGM, **within 30 days** of the conclusion of the AGM.
2. The report is duly signed and dated by the Chairman of the meeting or in case of his inability to sign, by any 2 directors of the company, one of whom shall be the MD (if there is one) and CS of the company.

OTHER IMPORTANT RETURNS

Return of Allotment (Section 39)

Check whether

1. In case company makes any allotment of its securities, it has, **within 30 days** thereafter, filed with the ROC a return of allotment in **Form PAS-3**.
2. A certified list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees was attached with PAS-3.
3. If the company has allotted securities as fully or partly paid up for consideration other than cash, whether a copy of the contract, duly stamped, or where the contract is not in writing complete particulars of the contract stamped is attached to the Form PAS-3. In such a case, whether a report of a registered valuer in respect of valuation of the consideration was also attached to PAS-3.
4. In the case of issue of bonus shares, a copy of the resolution passed in the GM authorizing the issue of such shares was attached to the Form PAS-3.

Notice for alteration of share capital (section 64)

Check whether

1. AOA contains the power to alter share capital.
2. Company has filed a notice with the ROC within 30 days of such alteration along with altered MOA.
3. The notice is in Form No. SH-7 of the Companies (Share Capital and Debentures) Rules, 2014.

Return of changes in shareholding position of Promoters and top 10 shareholders {Section 93 read with Rule 13 of the Companies (Management and Administration) Rules, 2014}

Check whether

1. In the case of a Listed Company, the company has filed Form No. MGT-10 with the ROC with fee with respect to changes relating to either increase or decrease of 2 %, or more in the shareholding position of promoters and top 10 shareholders of the company in each case, either by value or volume of the shares, within 15 days of such change.

Return of Appointment of Managerial Personnel (section 196) Check whether

1. The Board has passed a resolution for the appointment of Managerial Personnel, viz. MD, WTD or manager, subject to approval by members at the next GM.

2. The notice convening the board/ general meeting for considering the appointment includes the terms and conditions of such appointment and remuneration payable and other matters, including interest of director(s) in such appointments, if any.
3. A return of appointment of a MD, WTD or Manager, CEO, CS and CFO has been filed within 60 days of the appointment, with the ROC in Form No. MR-1 as per Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 along with prescribed fee.
4. The provisions of Section 203 of the Act relating to the appointment of KMP and the Rules there under have been complied with.

Particulars of Appointment of Directors and key managerial personnel (section 170)

Check whether

In case of appointment:

1. The person to be appointed as director has given his consent to act as director to the company in Form No. DIR-2.
2. The company has filed Form No. DIR-12 as per Companies (Appointment and Qualification of Directors) Rules, 2014 along with such consent in DIR-2 with the ROC within 30 days of such appointment.

In case of change:

1. The company has received the notice of resignation from the director in writing.
2. The company has filed Form No. DIR-12 as per Companies (Appointment and Qualification of Directors) Rules, 2014 along with notice of resignation within 30 days of such change.

RETURN OF DEPOSITS

Check whether

1. Every company referred to in section 73(2) and every eligible company intending to accept deposits has issued a circular or a circular in the form of advertisement respectively in Form DPT-1 and has complied with the requirements of Rule No. 4 of Companies (Acceptance of Deposits) Rules, 2014.
2. Whether the provisions relating to Deposit Insurance have been complied with; (Rule 5)
3. Whether the company has created security for repayment of deposit and interest; (Rule 6)
4. Whether the company has appointed Trustees for secured deposit in the manner and Deposit Trust Deed has been executed; (Rule 7)
5. Whether the company has maintained liquid assets and created a Deposit Repayment Reserve Account; (Rule 13)
6. The company has on or before the 30th day of June, of every year, filed with the ROC, a return in Form DPT-3. (Rule 16)
7. Check whether the form DPT-3 contains the information therein as on the 31st day of March of that year duly audited by the auditor of the company.
8. Whether Register of Deposits has been maintained (Rule 14)

Particulars of Beneficial Interest in Shares (section 89)

Check whether

1. The company has received the declaration from the member/ beneficial owner in the prescribed form MGT-4/ MGT-5.
2. Such declaration is noted in the register of members.
3. The company has filed within 30 days of the receipt of the declaration, a return in Form No. MGT.6 as per Companies (Management and Administration) Rules, 2014 with the ROC in respect of such declaration with fee.

SPECIMEN OF FORM SECRETARIAL AUDIT REPORT (Form No. MR-3)
SECRETARIAL AUDIT REPORT

FOR THE FINANCIAL YEAR ENDED … … …

[Pursuant to section 204(1) of the Companies Act, 2013 and Rule No. 9 of the Companies Appointment and Remuneration of Managerial Personnel) Rules, 2014]

To,
The Members,
……. Limited
I/ We have conducted the secretarial audit of the compliance of applicable statutory provisions and the adherence to good corporate practices by _____ (Name of the company). (hereinafter called the company). Secretarial Audit was conducted in a manner that provided me/ us a reasonable basis for evaluating the corporate conducts/ statutory compliances and expressing my opinion thereon.

Based on my/ our verification of the _____ (name of the company's) books, papers, minute books, forms and returns filed and other records maintained by the company and also the information provided by the Company, its officers, agents and authorized representatives during the conduct of secretarial audit, I/ We hereby report that in my/ our opinion, the company has, during the audit period covering the financial year ended on ____, _____ complied with the statutory provisions listed hereunder and also that the Company has proper Board-processes and compliance-mechanism in place to the extent, in the manner and subject to the reporting made hereinafter:

I/ We have examined the books, papers, minute books, forms and returns filed and other records maintained by _____ ("The Company") for the financial year ended on _____, _____ according to the provisions of:

1. The Companies Act, 2013 (the Act) and the rules made thereunder
2. The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder
3. The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder
4. Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings

5. The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):

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

6. ……. (Mention the other laws as may be applicable specifically to the company)

I/ We have also examined compliance with the applicable clauses of the following

1. Secretarial Standards issued by the Institute of Company Secretaries of India.
2. The Listing Agreements entered into by the Company with …… Stock Exchange(s), if applicable;

During the period under review the Company has complied with the provisions of the Act, Rules, Regulations, Guidelines, Standards etc. mentioned above subject to the following observations:

I/ We further report that

The Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors and Independent Directors. The changes in the composition of the Board of Directors that took place during the period under review were carried out in compliance with the provisions of the Act.

Adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance, and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.

Place: Signature

Date: Name of Company secretary in Practice

ACS/ FCS No.

CP No.

FOREIGN DIRECT INVESTMENTS IN INDIA

Meaning

- FDI means investment made by non-resident entity or person resident outside India (PROI) in capital of Indian company or Indian entity.
- Foreign Investment in India is governed by the FDI policy announced by the CG and the provisions of the FEMA 1999.
- Generally, FDI in 2 forms are allowed - joint venture(JV) or wholly owned subsidiary (WOS).

Who can Make FDI

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

TYPE OF INSTRUMENTS

1. Indian companies can issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference
2. Optionality clauses are allowed in equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares under FDI scheme, subject to the following conditions:
   - ✓ There is a minimum **lock-in-period of 1 year** which shall be effective from the date of allotment of such capital instruments.
   - ✓ After the lock-in-period and subject to FDI Policy provisions, if any, the non-resident investor exercising option/ right shall be eligible to exit without any assured return, as per pricing/ valuation guidelines issued by RBI from time to time.

ENTRY ROUTES FOR INVESTMENTS IN INDIA

FDI can be made under two routes:

Entry Routes for FDI

↓	↓
Automatic Route	Government Route
↓	↓
Only Intimation Required	Prior Approval Required

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

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

INDUSTRIAL POLICY TOWARDS FDI

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

Foreign investment in shares in any industry up to 100% is permitted **except the following –**

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

PROHIBITION ON INVESTMENT IN INDIA

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

FDI- PERMITTED SECTORS

- Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions;
- Development and Production of seeds and planting material;
- Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, under controlled conditions; and
- Services related to agro and allied sectors
- Tea sector including tea plantations
- Mining and Exploration of metal and non-metal ores
- Coal & Lignite
- Petroleum & Natural Gas
- Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)
- Defence Industry subject to Industrial license under the IDRA 1951
- Broadcasting Carriage Services
- Broadcasting Content Services
- Print Media
- Civil Aviation
- Airports
- Air Transport Services
- Courier Services
- Construction Development: Townships, Housing, Built-up Infrastructure
- Industrial Parks
- Satellites – establishment and operation
- Private Security Agencies
- Telecom Services
- Cash & Curry Wholesale Trading/ Wholesale Trading

- E-commerce activities
- Single Brand product retail trading
- Multi Brand Retail Trading
- Railway Infrastructure
- Asset Reconstruction Companies
- Banking – Private Sector
- Banking – Public Sector
- Commodity Exchanges
- Credit Information Companies (CIC)
- Infrastructure Company in Securities Market
- Insurance
- Non-Banking Finance Companies (NBFC)
- Pharmaceuticals

ELIGIBILITY OF FDI IN RESIDENT ENTITIES

FDI in an Indian Company	Indian companies including those which are micro and small enterprises can issue capital against FDI.
FDI in Partnership Firm / Proprietary Concern	1. A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest by way of contribution to the capital of a firm or a proprietary concern in India on no – repatriation basis provided; Amount is invested by inward remittance or out of NRE/ FCNR (B)/ NRO account maintained with Authorized Dealers/ Authorized banks. The firm or proprietary concern is not engaged in any agricultural/ plantation or real estate business or print media sector. Amount vested shall not be eligible for repatriation outside India. 2. Investments with repatriation benefits: NRIs/PIO may seek prior permission of RBI for investment in sole proprietorship concerns/ partnership firms with repatriation benefits. The application will be decided in consultation with the CG. 3. Investment by non-residents other than NRIs/ PIO: A person resident outside India other than NRIs/ PIO may make an application and seek prior approval of RBI for making investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.
FDI in Limited Liability Partnership	FDI in LLPs is permitted, subject to the following conditions: 1. FDI in LLPs has been allowed, through the Government approval route, only for LLPs operating in sectors/ activities where 100% FDI is allowed, through the automatic route and there are no FDI – linked performance related conditions.

	2. LLPs with FDI will not be allowed to operate in agriculture/ plantation activity, print media or real estate business. 3. An Indian company, having FDI, has been permitted to make downstream investment in an LLP only if both – the company, as well as the LLP – are operating in sectors where 100% FDI is allowed, through the automatic route and there are no FDI – linked performance related conditions.
FDI in Trusts	FDI in Trusts other than VCF is not permitted.
FDI in other Entities	FDI in resident entities other than those mentioned above is not permitted.

Checklist on FDI under Automatic Route

1. Check the eligibility of the person investing in FDI.
2. Check whether the total FDI is within the sectoral cap and not under prohibited sectors.
3. Check whether the company has complied with pricing guidelines for FDI while issuing fresh shares to person resident outside India.
4. Check whether consideration received for FDI is as per the permitted modes of payment.
5. Check whether the Company issued equity shares against import of capital goods/ machinery, equipment etc. If so whether conditions stipulated in this regard is complied.
6. Check whether the company has issued shares under ADR/ GDR. If so whether conditions stipulated are fulfilled.
7. Check whether the company has informed about the inflow of funds **within 30 days** from the date of receipt.
8. Check whether the equity instruments are issued **within 180 days** of receipt of funds.
9. Check whether the company issuing shares under automatic route has reported the issue of shares (including shares issued under ESOP) in form FC-GPR **within 30 days** from the date of issue of shares. Also check whether a certificate from PCS is attached for compliance.
10. Check whether the reporting for FDI for transfer of shares is made in Form FC-TRS.
11. Check whether the reporting of conversion of ECB into equity in form ECB-2 along with FC-GPR.

FDI under Approval Route

1. Check whether prior approval of Foreign Investment Promotion Board is obtained for FDI which are in excess of sectoral cap.
2. Check whether the shares issued to person who is a citizen of Bangladesh or an entity incorporated in Bangladesh/ Pakistan under the FDI scheme is with the prior approval of the FIPB and is subject to the prohibitions applicable.
3. Check whether the conversion of import payables/ pre incorporation expenses/ share swap is treated as consideration for issue of shares with the approval of FIPB.

4. Check whether the FDI in a non SME has exceeded 24% of paid up capital or sectoral cap whichever is lower, if such non SME has industrial licence for products reserved for SMEs? If so prior approval of FIPB is obtained?
5. Check whether there is any transfer of shares from resident to non-resident which requires FIPB approval.
6. Check whether the company has complied with reporting requirements for issue of shares under approval route.

DIRECT INVESTMENT OUTSIDE INDIA

Overseas Investment can be made under two routes viz.

1. Automatic Route

2. Approval Route

AUTOMATIC ROUTE	An Indian Party has been permitted to make investment in overseas JV/ WOS subject to following conditions	a. The total financial commitment of the Indian party should not exceed **400 % of the net worth** of Indian party (corporates) as on the date of the last audited balance sheet. b. The Indian Party is required to report such acquisition in form ODI to the AD bank for report to the Reserve Bank within 30 days from the date of the transaction. c. The direct investment is made in overseas JV/ WOS engaged in bonafide business activity. d. The Indian party is not on RBI's caution list or under investigation of enforcement directorate. e. The automatic route facility is not available for investment in Pakistan. f. For every JV and WOS RBI allots the unique identification number.

Direct Investment Outside India – Automatic Route

1. Check whether the investment (total financial commitment) in overseas JV/ WOS does **not exceed 400%** of the Net-worth as on the date of last audited Balance Sheet of Indian Party.
2. Check whether the Indian entity has extended loan or guarantee if any only to overseas JV/ WOS in which it has equity participation?
3. Ensure that the company has not created any charge on immovable/ movable property/ financial assets of Indian party in favour of a non-resident entity.
4. Ensure that the Indian party is not in RBI's Exporters caution list/ list of defaulters.
5. Ensure that all transactions relating to JV/ WOS is routed through one branch of an authorized dealer bank to be designated by Indian Party.
6. In case of partial/ full acquisition of an existing foreign company, where investment is **more than USD 5 million**, the valuation of shares was made by **Category-I** Merchant Banker/ appropriate regulatory authority in a host country and in other cases by a chartered accountant.
7. Ensure that investment if any, in Nepal is made only in Indian Rupees.
8. Ensure that the reporting of ODI is made in form ODI **within 30 days** from the date of transaction
9. Check whether the issue of guarantee by an Indian Party to step-down subsidiary of JV/ WOS is as per the conditions stipulated.
10. Check whether the transfer of shares by resident to another resident or non-resident as the case may be is subject to the prescribed conditions.

Direct Investment outside India – Approval Route

1. Check whether prior approval of RBI is obtained in all cases.
2. Check whether specific approval of RBI is obtained for creating charge on immovable/ moveable property and other financial assets (except pledge of shares of overseas JV/ WOS) of the Indian party/ group companies in favour of a non-resident entity within the overall limit fixed (presently 100%) for the financial commitment subject to submission of a '**No Objection**' by the Indian party and their group companies from their Indian lenders
3. Whether approval of RBI is obtained for issuance of corporate guarantee on behalf of **2nd generation** or subsequent level step down operating subsidiaries.
4. Check whether the investment by Indian Mutual funds registered with SEBI is as per the norms.
5. Check whether FIPB approval is obtained if the investment is by share swaps.

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SECRETARIAL STANDARD

Secretarial Standards – Meaning

1. Secretarial Standards are the policy documents relating to various aspects of secretarial practices in the corporate sector.
2. These standards lay down a set of principles which companies are expected to adopt and adhere to, in discharging their responsibilities.

Formulator of the Secretarial Standards

ICSI constituted the Secretarial Standards Board (SSB) in the year 2000 for formulating Secretarial Standards. SSB formulates Secretarial Standards taking into consideration the applicable laws, business environment and the best secretarial practices prevalent.

Composition of Secretarial Standards Board (SSB)

SSB having members from following authorities.

1. ICSI members working in Companies as well as in practice
2. Representatives of MCA,
3. Representatives of SEBI
4. Representatives of ICAI
5. Representatives of ICWAI

Scope and Functions of the Secretarial Standards Board

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, Corporates and other users.

The main functions of SSB are

1. Formulating Secretarial Standards
2. Clarifying issues arising out of the Secretarial Standards
3. Issuing Guidance Notes
4. Reviewing and updating the Secretarial Standards

Scope of Secretarial Standards

1. The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations.
2. Secretarial Standards that are issued will be in conformity with the provisions of the applicable laws.
3. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

Procedure for issuing Secretarial Standards

SSB, in consultation with the ICSI council, shall determine the areas in which Secretarial Standards need to be formulated.
↓
SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards
↓
The preliminary draft of the Secretarial Standard prepared by the Working Group shall be circulated amongst the members of SSB for discussion and shall be modified appropriately.
↓
The preliminary draft will then be circulated to the members of the Central Council as well as to Chairmen of Regional Councils/ Chapters of ICSI, various professional bodies, Chambers of Commerce, regulatory authorities for ascertaining their views.
↓
On the basis of the preliminary draft and the discussion with the bodies/organizations, an Exposure Draft will be prepared and published in the "Chartered Secretary", the journal of ICSI, and also put on the Website of ICSI to elicit comments from members and the public at large.
↓
After taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalized by SSB and submitted to the Council of ICSI.
↓
The Council will consider the final draft of the proposed Secretarial Standard and finalize the same in consultation with SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

SECRETARIAL STANDARDS UNDER THE COMPANIES ACT, 2013

Introduction and Need

The term 'Secretarial Standard' is defined as an explanation to section 205 of the Companies Act, 2013 to mean secretarial standards issued by ICSI constituted u/s 3 of the Company Secretaries Act, 1980 and approved by the Central Government. Thus, for the 1st time, Secretarial Standards have been accorded statutory recognition under the Companies Act, 2013.

The formulation of Secretarial Standards by the SSB and its statutory recognition is a unique and pioneering step towards standardization of diverse Secretarial practices prevalent in the corporate sector. No similar Standards are in existence elsewhere in the world.

Generally, in addition to the Secretarial Standards, the requirements laid down under any other applicable laws and rules and regulations, need to be complied with. However, in case of variations in

any provision of the applicable laws and the Secretarial Standards, the stricter provisions need to be complied with.

If, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

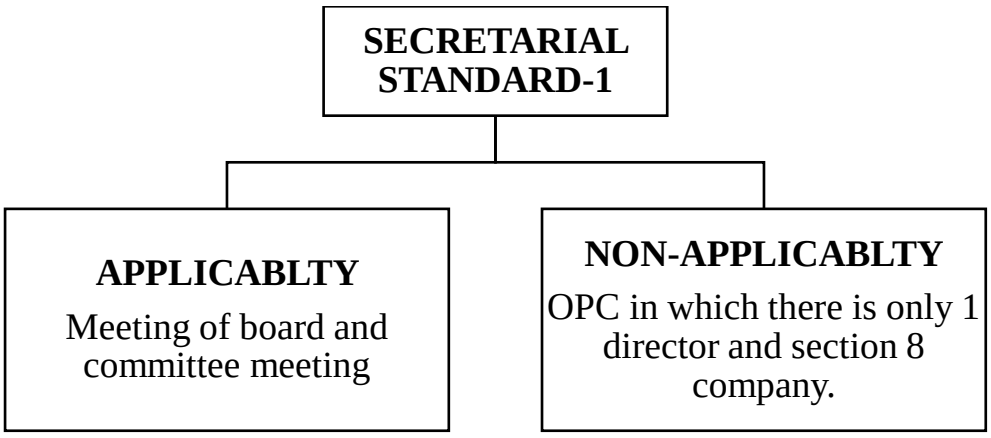
Section 118 (10) of the Companies Act, 2013 requires every company to observe Secretarial standards with respect to Board meetings (SS-1) and General meetings (SS-2).
Also, as per section 205(1) (b), it is the duty of the company secretary to ensure that the company complies with the applicable secretarial standards.

Note: Earlier SS were approved by CG on 10th April 2015 and were published in Gazette on 23rd April 2015. They were supposed to be effective from 1st July 2015 but it was withdrawn on 30th Sept 2017 without effecting the enforceability of SS 1 and SS 2 during the period before such withdrawal.
Now Revised SS-1 and SS-2 are approved by CG on 14th June 2017 which shall be effective from 1st October 2017.

Even Section 121 of the Companies Act, 2013 requires confirmation with respect to compliance of Secretarial Standards in the Report on the AGM.

Section 205 (1) of the Companies Act, 2013 lays down the functions of the Company Secretary which inter-alia include ensuring that the company complies with the applicable Secretarial Standards.

SECRETARIAL STANDARD -1 BOARD MEETING



- Calendar Year is 1st January and ends on 31st December
- National Holiday" means Republic Day i.e. 26th January, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government

CONVENING A MEETING

Any **Director of a company may, at any time, summon a Board Meeting** and the CS or any authorized person, shall convene Board Meeting, in consultation with the Chairman or in his absence, the MD or in his absence, the WTD, where there is any, unless otherwise provided in the AOA.

DAY, TIME, PLACE, MODE AND SERIAL NUMBER OF MEETING:

- Every Meeting **shall have a serial number.**
- A Meeting may be convened at **any time and any place, on any day.**

NOTICE OF BOARD MEETING

Notice, Agenda and Notes of Agenda in writing of every Meeting shall be given to EVERY DIRECTOR by following ways

- By hand or by Speed Post or by Registered Post or
- By fax or by Email or by any other electronic mode.
- **In case the company sends the Agenda and Notes on Agenda by speed post or by registered post an additional 2 days shall be added for the service of Agenda and Notes on Agenda.**
- **Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. However, in case of a Meeting conducted at a shorter notice, the Company may choose an expedient mode of sending notice.**
- **Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall be at least 3 years from the date of the Meeting.**
- Notice shall be issued by CS/Director/any other authorized officer.
- **Notice shall be sent even if meeting is held on pre determined dates or at pre determined intervals.**
- **Notice on items of business which are in the nature of unpublished price sensitive information may be given at a shorter period of time but only with consent of a majority of the directors, which shall include at least 1 Independent Director.**
- **Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting.**
- The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.

TIME PERIOD FOR ISSUE OF NOTICE

↓ **NORMAL NOTICE**	↓ **SHORTER NOTICE**
Notice, Agenda and Notes of Agenda convening a Meeting shall be given **at least 7 days** before the date of the Meeting, unless the Articles prescribed a longer period. In case the company sends the Notice, Agenda and Notes of Agenda by Speed Post or by registered post, An **Additional 2 Days** shall be Added for the service of Notice. The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director.	To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, If at least one Independent Director, if any, shall be present at such Meeting. If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any. In case the company does not have an Independent Director, the decisions shall be final only on Ratification Thereof By A Majority Of The Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company

Matter which can't be dealt at a meeting held though Video conferencing unless expressly permitted by the Chairman:

- Approval of the annual financial statements;
- Approval of the Board's report;
- Approval of the prospectus;
- Audit Committee Meetings for consideration of accounts; and
- Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

CHAIRMAN OF BOARD MEETING

1. The Chairman of the Board shall conduct the Board Meeting. If no such Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, unless otherwise provided in the AOA
2. **If the Chairman is interested in an item of business, he shall, with the consent of the members present, entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the chair after that item of business has been transacted. However, in case of a private company,**

the Chairman may continue to chair and participate in the Meeting after disclosure of his interest.

3. **If the item of business is a related party transaction, the Chairman shall also not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such items.**
4. In case some of the Directors participate through Electronic Mode, the Chairman and the Company Secretary shall take due and reasonable care to safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures to record proceedings and safe keeping of the recordings. No person other than the Director concerned shall be allowed access to the proceedings of the Meeting where Director (s) participate through Electronic Mode, except a Director who is differently abled, provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains confidentiality of the matters discussed at the Meeting.
5. The Chairman shall ensure that the required Quorum is present throughout the Meeting and at the end of discussion on each agenda item the Chairman shall announce the summary of the decision taken thereon
6. The Chairman of the Board or in his absence, the Managing Director or in their absence, the Managing Director or in their absence, the WTD 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.

FREQUECNY OF MEETING

↓	↓
First board Meeting" should be held within **30 days** of Incorporation of Company.	Meetings of the Board of Directors; (Except Small Company, OPC and Dormant co.); ➢ The company shall hold. ➢ At least 4 Board Meetings in a calendar year. ➢ Maximum interval between 2 board meetings 120 days

An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.

MEETINGS OF THE INDEPENDENT DIRECTORS:

Where a company is required to appoint Independent Directors under the Act, such **Independent Directors shall meet at least once in a Calendar year.**

QUORUM

- The Quorum for a Meeting of the Board shall be 1/3rd or total no. of directors OR 2 Directors whichever is HIGHER. Any fraction contained in the above 1/3rd shall be rounded off to the next one.

- Where the Quorum requirement provided in the AOA is higher than 1/3rd of the total strength; the company shall conform to such higher requirement.
- If the number of Interested Directors exceeds or is equal to 2/3rd of the total strength, the remaining Directors present at the Meeting, being not less than 2, shall be the Quorum during such item.
- If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.
- **Quorum shall be present not only at the time of commencement of the Meeting but also throughout the Meeting.**
- **Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law.**
- If a Director is interested in any resolution, he shall either be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest.
- **If the item of business is a related party transaction, then he shall not be present at the meeting, whether physically or through Electronic Mode, during discussions and voting on such item.**

ATTENDANCE REGISTERS:

ATTENDANCE REGISTERS

Every Company shall maintain **separate attendance registers** for the Meetings of the Board & for the Meetings of the Committee. The pages of the respective attendance registers **shall be serially numbered**. If an attendance register is maintained in **loose-leaf form**, it **shall be bound periodically at-least once in every 3 years**.

↓	↓
PARTICULARS OF ATTENDANCE REGISTER OF BOARD MEETING ➢ Serial number and date of the Meeting; ➢ Place of the Meeting; ➢ Time of the Meeting; ➢ Names of the Directors and signature of each Director and their mode of presence, if participating through Electronic Mode. ➢ Name and Signature of the Company Secretary and Also of persons attending the Meeting by invitation. ➢ In case of Committee Meeting "name of the	**SIGNING OF ATTENDANCE REGISTER;** ➢ Every Director, Company Secretary who is in attendance and ➢ Every Invitee who attends a Meeting of the Board or Committee thereof shall sign the attendance register at that Meeting. ➢ The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company

Committee" also be mentioned. ➢ **The attendance register is open for inspection by the Directors, even after a person ceases to be a Director, he shall be entitled to inspect the attendance register of the Meetings held during the period of his Directorship** ➢ The attendance register shall be **preserved for a period of at-least 8 financial years** from the date of last entry made therein and may be destroyed thereafter with the approval of the Board	Secretary, by the Chairman or by any other Director present at the Meeting, if so authorized by the Chairman and the fact of such participation is also recorded in the Minutes. The attendance register shall be kept in the custody of the Company Secretary. ➢ Where there is no Company Secretary, the attendance register shall be kept in the custody of any other person Director authorized by the Board for this purpose.

PASSING OF RESOLUTIO BY CIRCULATION

The Act requires certain business to be approved **only at Meetings of the Board**. However, other **business that requires urgent decisions can be approved by means of Resolutions passed by circulation.** Resolutions passed by circulation are deemed to be passed at a duly convened Board Meeting and have equal authority.

Check whether

1. **A Resolution proposed to be passed by circulation is sent in draft along with necessary documents, individually to all the Directors including Interested Directors on the same day.**
2. The Resolution, if passed, shall be deemed to have been passed on the earlier of:
    a) The last date specified for signifying assent or dissent by the Directors or
    b) The date on which assent has been received from the required majority, provided that on that date the number of directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall not be one third or more of the total number of directors whichever is earlier and shall be effective from that date, if no other effective date is specified in such Resolution.
3. Resolutions passed by circulation shall be noted at a subsequent Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

MINUTES

1. Minutes **shall be recorded** in books maintained for that purpose.
2. A **distinct Minutes Book shall be maintained** for Meetings of the Board and each of its Committees.
3. The **pages** of the Minutes Books shall be **consecutively numbered.**
4. **Minutes shall not be pasted or attached to the Minutes Books, or tampered with in any manner.**

5. 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.
6. **Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense. Minutes need not be an exact transcript of the proceedings at the Meeting.**
7. **Within 15 days** from the date of the conclusion of the Board Meeting or Committee Meeting, the **draft Minutes** shall be circulated to all the Directors for their comments.
8. **Proof of sending** draft Minutes and its delivery **shall be maintained** by the company for **at least 3 years** from the date of the Meeting.
9. The Directors, (whether present at the Meeting or not), **shall communicate their comments**, if any, **in writing** on the draft Minutes **within 7 days** from the date of circulation. If no comment from director, the draft minutes shall be deemed to be approved.
10. **If any Director communicates** his comments **after the expiry of 7 days**, if so authorized by the Board, the Chairman shall have the discretion to consider such comments.
11. **A Director, who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not.**
12. Minutes shall be entered in the Minutes Book **within 30 days** from the date of conclusion of the Meeting.
13. **A Member of the company is not entitled to inspect the Minutes of the Meetings of the Board.**
14. The Board Report shall include a statement on compliances of applicable Secretarial Standards.
15. In case a Meeting is adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting. In respect of a Meeting convened but adjourned for want of Quorum, a statement to that effect by the Chairman or in his absence, by any other Director present at the Meeting shall be recorded in the Minutes.

CONTENTS OF MINUTES:

a) The names of Directors present and their mode of attendance (Physical or Video conference).
b) If a Director participate through E Mode → his particulars, the location from where and the agenda item in which he participated and wherever required, his consent to sign the statutory registers to be placed in at the Meeting as per the Act.
c) The name of CS who is in attendance and Invitees, if any, for specific items and mode of their attendance if through E - Mode.
d) Record of election, if any, of the Chairman of the Meeting.
e) Record of presence of Quorum.
f) The names of Directors who sought and were granted leave of absence.
g) The fact that an Interested Director was not participate in the discussions and did not vote on item of business in which he was interested and in case of a Related Party Transaction such director was not present in the meeting during discussions and voting on such item.

SECRETARIAL STANDARD – 2
GENERAL MEETINGS

APPLICABLITY

SS – 2 is applicable to all types of GM of all type of companies **except following**

1. OPC
2. Sec 8 co.
3. Other notified companies

However, sec 8 co. need to comply with the applicable provisions of the act relating to GM.

Note:

1. Principles of SS 2 are applicable mutatis mutandis to meeting of debenture holders and Creditors.
2. **A General Meeting shall be convened by or on the authority of the Board only.**

FREQUECNY OF GENERAL MEETING

AGM	**EGM:**
Every Company in each Calendar Year, hold a General Meeting called the AGM. **FIRST AGM:** First AGM within 9 months from the date of closing of 1st Financial Year of the Company. In case of 1st AGM, it is not necessary for the company to hold any AGM in the calendar year of its Incorporation. Time period of 1st AGM after Incorporation of Company cannot be extended. **SUBSEQUENT AGM:** Subsequent AGM shall be hold EARLIER of followings: ➢ **Within 6 months** from the end of each FY OR ➢ **Within 15 months** from the last AGM. ➢ Extension: Not exceeding 3 Month with the Prior approval of ROC.	The Board may also, whenever it deems fit, call an EGM of the Company. The Board shall, on the requisition of Members who hold, as on the date of the receipt of a valid requisition can call an EGM, 1. In the case of Company having a Share Capital, not less than 1/10th of the PSC carrying Voting Rights; OR 2. In the case of a Company not having share capital, not less than 1/10th of total voting power of the Company.

1. If, on receipt of a valid requisition having been made in this behalf, the Board, **within 21 days** from the date of such receipt, fails to call a Meeting on any day **within 45 days** from the date of receipt of such requisition.
2. The requisitionists may themselves call and hold the Meeting **within 3 months** from the date of requisition, in the same manner in which the Board should have called and held the Meeting.
3. Such requisition shall not pertain to any item of business that is required to be transacted mandatorily through postal ballot.

NOTICE

a. In writing
b. To every Member, Directors and Auditors, Secretarial Auditor, to Debenture Trustee, if any, and wherever applicable or so required, to other specified persons.
c. In case of a Nidhi company, Notice may be served individually only on Members who hold shares of **more than Rs. 1000 in face value OR more than 1% of the total PSC** of the company, **(w.i.l)**. For other Members, Notice may be served **by a public notice** in newspaper circulated in the district where the Registered Office of the company is situated and by displaying the same on the notice board of the company.

WHERE THE COMPANY HAS RECEIVED INTIMATION OF DEATH OF A MEMBER, Notice shall be sent as under:

- **Where securities are held singly**→ To the Nominee of the single holder;
- **Where securities are held jointly and any joint holder dies** → To the surviving 1st joint holder;
- **Where securities are held jointly and all the joint holders die**s → To the Nominee appointed by all the joint holders.
- **In the absence of a Nominee**→ To the legal representative of the deceased Member.
- **In case of insolvency of a Member** → To the assignee of the insolvent Member.
- **In case the Member is a company or body corporate which is being wound up** → To the liquidator.

d. By hand/ordinary post/by speed post/by registered post/by courier/by fax/by e-mail/by any other E-mode.
e. If any other particular mode is requested by Member, he shall pay such fees as may be determined by the company in its AGM and the Notice shall be sent to him in such mode.
f. If company have a **website**, the Notice shall simultaneously be hosted on the website till the conclusion of the Meeting. In case of a private company, the Notice shall be hosted on the website of the company, if any, unless otherwise provided in the AOA.
g. Notice shall contain complete particulars of the venue of the Meeting including **route map** and **prominent land mark**, if any, for easy location, **except in case of -**
    - A company in which only its directors and their relatives are members,
    - A wholly owned subsidiary (WOS)
h. An AGM and a Meeting called by the requisitionists **shall be called** during business hours, i.e., between 9 a.m. and 6 p.m., on a day that is not a **National Holiday.**

i. AGM shall be held either **at the registered office** of the company or at some other place within the city, town or village in which the registered office of the company is situated, whereas **other General Meetings may be held at any place within India.**

j. BUT if called by the requisitionists, it shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

k. In case of a **Government company**, the AGM shall be held at its registered office or any other place **with the approval of the CG.**

l. Notice and accompanying documents shall be given **at least 21 clear days in advance** of the Meeting. For the purpose of reckoning 21 days clear Notice, the day of sending the Notice and the day of Meeting shall not be counted. **Further in case the company sends the Notice by post or courier, an additional 2 days shall be provided for the service of Notice.**

m. In case a **valid special notice** has been received from any member, the company shall give Notice of the Resolution to all its Members **at least 7 days before** the Meeting, **exclusive of the day of dispatch of Notice and day of the Meeting.**

n. A shorter period of time is allowed, if written consent is given **by physical or electronic means**, by **not less than 95 %** of the entitled Members. The request for consenting to shorter Notice and accompanying documents shall be sent together with the Notice.

o. Notice of AGM shall **also specify the serial number** of the Meeting.

p. Notice shall be accompanied, by **an attendance slip** and **a Proxy form** with clear instructions for **filling**, **stamping**, **singing** and/ or **depositing** the Proxy form.

q. A meeting convened upon due notice shall not be postponed or cancelled unless there is a sufficient reason beyond the control of BOD. Such meeting can be reconvened to transact the **original business** after giving **at least 3 day's prior intimation** individually or through public (Newspaper) advertisement.

QUORUM OF GENERAL MEETING:

PRIVATE LIMITED:

2 Members Personally Present

PUBLIC LIMITED:

In case of Public Company "Minimum Present of Members required"

- 5 members personally present if the number of Members as on the date of Meeting are up to 1000.
- 15 members personally present if the number of Members as on the date of Meeting are more than 1000 but up-to 5000.
- 30 members personally present if the number of members as on date of the Meeting exceeds 5000.

IMPORTANT PROVISIONS FOR QUORUM OF GENERAL MEETING

- **Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.**

- Presence of a duly authorized representative body corporate, president and governor deemed to be a Member personally present and enjoy all the rights of a Member present in person.
- One person can be an authorized representative of more than one body corporate. Even he will treat as more than one member for the purpose of Quorum but there should be at least one more member personally present.
- **A member who is not entitled to vote on any particular item of business being a related party, if present shall be counted for the purpose of Quorum.**
- **Stipulation of the presence of Quorum doesn't apply with respect to items of business transacted through postal ballot.**
- **Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be, counted for the purpose of Quorum.**

ADJOURNAMENT OF MEETING:

- Meeting shall stand adjourned for want of requisite Quorum.
- A duly convened Meeting shall not be adjourned unless circumstances so warrant.
- A Chairman may also adjourn a Meeting in the event of disorder or other like causes, when it becomes impossible to conduct the Meeting and complete its business.
- A 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.

QUORUM AT ADJOURNED MEETING:

1. If, at an adjourned Meeting, quorum is not present within half hour from the time appointed, the Member present, being not less than 2 in number, will constitute the quorum.
2. If, at an adjourned Meeting, quorum is not present within half hour from the time meeting called by the Requisitionists, the Meeting shall stand cancelled.

NOTICE OF ADJOURNMENT OF MEETING:

IF MEETING ADJOURNED FOR PERIOD MORE THAN 30 DAYS OR SINE DIE

If a Meeting **adjourned for a period of ≥ 30 days**, a Notice of the adjourned meeting shall be given as if it is a **fresh General Meeting.**

IF MEETING ADJOURNED FOR PERIOD ≤ 30 DAYS:

The co. shall give at least 3 days' prior notice specifying the DAY, DATE, TIME & VENUE of the meeting, to the members either INDIVIDUALLY or by publishing **AN ADVERTISEMENT.**

IF MEETING ADJOURNED FOR WANT OF QUORUM:

If a Meeting other than an AGM and a requisitioned Meeting, stands adjourned **for want of Quorum**, the adjourned Meeting shall be held on the **same day, in the next week** at the same time and place or on such other day, not being a National Holiday, OR **as determined by the Board.**

An adjourned AGM, (adjourned for what ever reason), shall not be held on a National Holiday, only if any item relating to filling up of vacancy of a director retiring by rotation is included in the agenda of such adjourned Meeting.

The company shall ensure compliance of the provisions of holding the AGM every year, including adjournment thereof within a gap of not exceeding 15 months from the date of the previous AGM or within such extended period permitted by the ROC.

RESOLUTION TO BE DISCUSS AT ADJOURNED MEETING:
At an adjourned Meeting, **only the unfinished business** of the original Meeting shall be considered. **Any Resolution passed at an adjourned meeting** would be **deemed to have been passed on the date of the adjourned meeting and not on any earlier date**.

DISTRIBUTION OF GIFTS:
No gifts, gifts coupons, or cash in lieu of gifts shall be distributed to Member at or in connection with the Meeting.

PRESENCE OF DIRECTOR, COMPANY SECRETARY AND AUDITORS AT GENERAL MEETING

WHO SHALL PRESENT IN GENERAL MEETING ALONG WITH SHAREHOLDERS

DIRECTOR: Any absenteeism of director shall be explained by Chairman The Director who attends the General Meeting shall seat with Chairman. **COMPANY SECRETARY:** The CS shall sit with chairman AND shall assist the Chairman in conduction the Meeting. **CHAIRMAN OF COMMITTEE'S** The Chairman of Committee's and any other authorized member of such Committee authorized shall attend the General Meeting.	**STATUTORY AUDITOR:** **It is mandatory for the Auditor to attend General meeting; Auditor can absent himself if he get exemption from the Company to attend General Meeting OR If his authorized representative attend the General Meeting PROVIDED Authorized representative should also be qualified to be an Auditor.** **SECRETARIAL AUDITOR:** It is **mandatory** for the SA to attend **AGM**; SA can absent himself if he get exemption from the Company to attend General Meeting OR If his authorized representative attend the General Meeting PROVIDED Authorized representative should also be qualified to be an Auditor. The Chairman may invite the Secretarial Auditor to attend "**Any Other General Meeting".**

DUTIES OF CHAIRMAN:

- The Chairman shall ensure that the Meeting is duly constituted.
- The Chairman shall then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in Notice is transacted.
- The Chairman shall regulate the conduct of voting keeping in view the provisions of the Act.
- The Chairman shall explain the objective and implications of the Resolution before they are put to vote at the Meeting.
- **In case of public co., 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.**

PROXY:

- A member entitled to attend and vote is entitled to Appoint Proxy.
- A proxy can't act on behalf of more than 50 members and members holding aggregate more than 10% of the total share capital of the Company carrying voting rights. However, a member holding more than 10% of total voting right may appoint single proxy for his entire shareholding.
- If a person is appointed as proxy for more than 50 members, he shall choose ANY 50 members and shall confirm the same to company before commencement of specified period for inspection. OTHERWISE, the company shall consider only the 1st 50 proxies received as valid.

SIGNING OF PROXY FORM

WHO WILL SIGN THE PROXY FORM

↓	↓
MEMBER IS INDIVIDUAL BY THE MEMBER, or His attorney duly authorized in writing.	**MEMBER IS BODY CORPORATE** If the appointer is a body corporate than the instrument of Proxy should be under its seal and shall be signed by the: An officer, or An attorney duly authorized by it.

SOME SPECIAL PROVISIONS ON PROXY

- An instrument of proxy is valid only if it is **duly stamped.**
- Unstamped or inadequately stamped Proxies are INVALID.
- The proxy-**holder shall prove his identity** at the time of attending the Meeting.
- If company receive **multiple proxies without date or same date**, **all such multiple proxies shall be treated as invalid. Otherwise the last dated proxy shall be considered**
- It should be deposit with the Company **at least 48 hours** before the commencement of the Meeting **even on holiday.**

  Note: Any provision in the AOA of a company which specifies or requires a longer period for deposit of Proxy than 48 hours before a Meeting of the company shall have effect as if a period of 48 hours had been specified in or required for such deposit.
- Proxy form can be send either **in Person or Through Post.**
- All the Proxies **shall be recorded chronologically** in a register kept for that purpose.

- In case any proxy entered in the register is rejected, the reasons therefor shall be entered in the remarks column.
- **If the AOA 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 48 hours before the time of such adjourned Meeting.**

REVOCATION OF PROXY:

- A proxy later in date can revoke the earlier dated proxies.
- Proxy is valid until written notice of revocation has been received by the Company before the commencement of the Meeting or adjourned meeting.
- An undated notice of revocation shall not be accepted.
- In the case of joint membership, a notice of revocation of proxy shall be signed by the same Member, who had signed the proxy.
- When both the Member and Proxy attend the Meeting, the proxy stand automatically revoked.

Inspection of proxies

1. Requisitions for inspection shall be sent **in writing at least 3 days before commencement of meeting**.
2. Proxy list shall be available for inspection during the period beginning 24 hours before the commencement of the Meeting and Ending with the conclusion of the Meeting Between 9 a.m. to 6 p.m.
3. **If meeting is adjourned a fresh requisition is required to be made to inspect the proxy list**

VOTING

1. **Every Resolution shall be proposed by a Member and seconded by another Member.**
2. **Every Listed company other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies as prescribed shall provide e-voting facility to their Members to exercise their Voting Rights.**
3. The result of the voting along with the scrutinizer's report shall be displayed **for at least 3 days** 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.
4. Every company, which has provided e-voting facility to its Members, shall also put every Resolution to vote through a ballot process at the Meeting. Ballot process may be carried out by distributing ballot/ poll slips or by making arrangement for voting through computer or secure electronic systems. Any Member, who has already exercised his votes through Remote e-voting, may attend the Meeting but is prohibited to vote at the Meeting and his vote, if any, cast at the Meeting shall be treated as invalid. A Proxy can vote in the ballot process.
5. **Nidhis are not required to provide e-voting facility to their Members.**
6. **In case of a private company, a member who is a related party is entitled to vote on such Resolution.**

7. A member who is a related party is entitled to vote on a Resolution pertaining to approval of any contract or arrangement to be entered into by:
   (a) A Government company with any other Government company; or
   (b) An unlisted Government company with the prior approval of competent authority, other than those contract or arrangements referred in clause (a)

CONDUCT OF POLL

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 48 hours of the demand for poll.

Each Resolution put to vote by poll shall be put to vote separately. One ballot paper may be used for more than one item.

DECLARATION OF RESULTS

1. The scrutinizer's report **within 7 days** from the last date of the poll to the Chairman who shall countersign the same and
2. Declare the **result of the poll within 2 days of the submission of report** by the scrutinizer, with details of
   - ➢ **The number of votes cast for and against the Resolution,**
   - ➢ **Invalid votes and**
   - ➢ **Whether the Resolution has been carried or not.**

If Chairman is not available, scrutinizer's Report shall be submitted to any authorized person, who shall countersign the scrutinizer's report on behalf of the Chairman.

PASSING OF RESOLUTIONS BY POSTAL BALLOT

1. Every company, **(except a company having ≤ 200 Members)** shall transact items of business as prescribed, only by means of postal ballot instead of transacting such business at a General Meeting.
   Note: Ordinary Business shall not be transacted by means of a postal ballot.
2. The Notice shall be accompanied by the postal ballot form with the necessary instructions for filling, signing and returning the same.
3. 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.
4. The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutinizer.
5. A single postal ballot Form may provide for multiple items of business to be transacted.

A Resolution passed by postal ballot shall not be rescinded otherwise than by a Resolution passed subsequently through postal ballot.
No amendment or modification shall be made to any Resolution circulated to the Members for passing by means of postal ballot.

WHEN A POSTAL BALLOT FORM SHALL BE CONSIDERED INVALID

- **Any form used other** than one issued by the company.
- It has **not been signed by or on behalf of the Member**
- **Signature** on the postal ballot form **doesn't match** the specimen signatures with the company
- It is **not possible to determine** without any **doubt the assent or dissent of the Member**;
- Neither assent nor dissent is mentioned;
- Any competent authority has given directions in writing to the company to freeze the Voting Rights of the Members.
- The envelope containing the postal ballot form is received after the last date prescribed
- It is received from a Member who is in arrears of payment of calls.
- It is defaced or mutilated in such a way that its identity as a genuine form cannot be established

MINUTES

Every company shall keep Minutes of all Meetings. Minutes kept in accordance with the provisions of the Act **evidence** the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

IMPORTANT PROVISIONS

1. A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act. The pages of the Minutes Books shall be consecutively numbered.
2. Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically at least once in every 3 years.
3. Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.
4. Minutes of AGM shall also state the **serial number** of the Meeting.
5. Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.
6. The CS shall record the proceedings of the Meetings. If there is no Company Secretary, any other authorized person shall record the proceedings.
7. Minutes shall be written in 3rd person and past tense. Resolutions shall however be written in present tense. **Minutes need not be an exact transcript of the proceedings at the Meeting.**
8. Minutes shall be entered in the Minutes Book **within 30 days** from the date of conclusion of the Meeting.

9. 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 authorized by the Board for the purpose.
10. 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.
11. If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.
12. Minutes of all Meetings shall be preserved permanently in physical or in electronic form.
13. Minutes Books shall be kept in the custody of the CS or any authorized Director.
14. A company **may maintain** its Minutes **in physical or in electronic form**.
15. Minutes Books shall be kept at the Registered Office of the company.

Resolutions

- ✓ Resolutions for items of business which are likely to affect the market price of the securities of the company shall not be withdrawn.
- ✓ Further, any resolution proposed for consideration through e-voting shall not be withdrawn.
- ✓ A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.
- ✓ Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.
- ✓ No modification to any proposed text of the Resolution shall be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical, clerical, factual and typographical errors, if any, may be corrected as deemed fit by the Chairman.
- ✓ No modification shall be made to any Resolution which has already been put to vote by Remote e-voting before the Meeting.

Reading of Reports

The qualifications, observations or comments or other remarks, if any, mentioned in the Auditor's Report on the financial transaction or Secretarial audit report issued by PCS, which have any adverse effect on the functioning of the company shall be read at the AGM and attention of the Members present shall be drawn to the explanations/ comments given by the Board of Directors in their report.

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CHAPTER 3
DUE DILIGENCE- AN OVERVIEW

DUE DILIGENCE:
It is the process by which **confidential legal**, **financial** and **other material information** is **exchanged**, **reviewed** and **appraised** by the parties to a business transaction, which is **done prior to the transaction**.

Due diligence is an **analysis** and **risk assessment** of an impending business transaction. It is careful and **methodological investigation** of a business or persons or the performance of an act with certain standard of care **to ensure** that the information is **accurate** and to uncover the information that may affect the outcome of the transaction.

It is **basically a background check** to make sure that the parties to the transaction have the required information they need to proceed with the transactions. It is **used to investigate** and **evaluate a business opportunity**. It is a tool that often **provides insights into the hidden facts.**

Due diligence is necessary to allow the investigating party **to find out everything** that one needs to know about the subject of due diligence.

Due diligence report (DDR) should provide information and insight on aspects such as the **risks of a transaction**, the **value at which the transaction should be undertaken** the **warranties** and **indemnities** that need to be obtained from the vendor etc.

NEED OF DUE DILIGENCE:
Misrepresentations and fraudulent dealings are not always obvious or straight. Thus, due diligence is **designed to protect the interests** of the company by providing objective and reliable information on the target company before making any written commitments.

Thus, due diligence **provides the desired comfort level** about the potential investment and to **minimize the risks** such as hidden uncovered liabilities, poor growth prospects, price claimed for proposed investment being on higher side. Due diligence is also necessary to ensure that there are no onerous contracts or other agreements that could affect the acquirer's return on investment.

Thus, due diligence exercise is needed to confirm about the nature and genuineness of the business, identify defects/ weaknesses in the target company and to avoid a bad business transaction and to negotiate in a better manner. In short, due diligence is a SWOT analysis of an investment which is essentially required to make an informed decision about a potential investment.

OBJECTIVE OF DUE DILIGENCE:

The objective of due diligence is to verify the strategic identification or attractiveness of the target company, valuation, risk associated etc. The major objectives of the due diligence are:

1) Collect material information from the target company
2) Conduct SWOT analysis
3) Improve bargaining position depending on the result
4) To take an informed decision about the investment
5) Identification of areas where representation and warranties are required
6) To provide a desired comfort level in the transaction
7) To ensure complete and accurate disclosure
8) To bridge the gap between the existing and expected
9) To take smooth/accurate action/decision.
10) To enhance the confidence of the stakeholders.

The SWOT analysis of the target business has to reveal the strengths and weaknesses of not only the financials but also intangibles. To do this effectively, the professional buyer needs to be clear about the goals and motives for acquiring the target company as well as the value the buyer is attempting to create with the purchase. Similarly, cultural issues have to be addressed in time.

A thorough due diligence helps to reveal any of the negatives. However, the target company is rarely eager to reveal the negatives to other party. Thus, during due diligence, all the information may not be revealed. Thus, extracting information becomes tricky and in such a scenario, services of experts are hired in due diligence.

SCOPE OF DUE DILIGENCE:

Scope of due diligence is transaction based and is depending upon the needs of the people who are involved in the potential investments. Due diligence is generally understood by the legal, financial and business communities to mean the disclosure and assimilation of public and proprietary information related to the assets and liabilities of the business being acquired.

Due diligence would include a thorough understanding of all the obligations of the target company, debts, rights and obligations, pending and potential lawsuits, leases, warranties.

The due diligence inspection scope would cover:

- Compliance with applicable laws
- Regulatory violations or disciplinary actions
- Litigation and assessment of feasibility of pursuing litigation
- Financial statements
- Assets real and intellectual property
- Unpaid tax liens and judgments.
- Exaggerated credentials and fraudulent claims
- Misrepresentations or character issues
- Past business failures and consequential debts
- Regulatory violations or any disciplinary actions.

- Cross border issues like double taxation, foreign exchange fluctuation, sovereign risk, investment climate, cultural aspects.
- Reputation, goodwill and other intangible assets.

TYPES OF DUE DILIGENCE

In business transactions, the due diligence process varies for different types of companies. The relevant area of concern may include the financial, legal, labor, tax, and environment and market/commercial situation of the company.

Other areas may include intellectual property, real and personal property, insurance and liability coverage, debt instrument review, employee benefits, labor matters and international transactions.

1) BUSINESS DUE DILIGENCE:

OPERATIONAL DUE DILIGENCE	It aims at uncovering operational weaknesses, assessment of the functional operations of the target company, operational efficiency etc. Thus, it basically aims at the assessment of the functional operations of the target company and uncovers the inadequacy of control mechanism.
STRATEGIC DUE DILIGENCE	It tests the strategic rationale behind a proposed transaction and analyses whether the deal is commercially viable, whether the target company's value would be realized. It considers factors such as value creation opportunities, competitive positions, and critical capabilities.
INTELLECTUAL PROPERTY DUE DILIGENCE:	The main object of such due diligence is to ascertain the nature and scope of target company's right over the intellectual property, evaluate the validity of the same and check whether any infringement claim is going on against the company. Just like any tangible asset, intellectual properties of the company are often sold and purchased in business deals and thus the intellectual property due diligence is very significant before entering into a deal.
TECHNOLOGY DUE DILIGENCE:	It covers aspects such as current level of technology, company's existing technology, further investments required. Technology is a key component of merger and acquisition activities, its imperative to look at IT considerations.
ENVIRONMENTAL DUE DILIGENCE:	It analysis the environmental risks and liabilities associated with an organization, confirms legal compliances and gives the information regarding environmental risks associated with the target company's sites and operations. It provides the acquirer with a detailed assessment of the historic, current and potential future environmental risks associated with the target organization's sites and operations. **It involves risk identification and assessment with respect**

	to: • Review the environmental setting and history of the site. • Assessment of the site conditions • Operations and management of sites • Confirm legal compliance and pollution checks from regulatory authorities etc.
HUMAN RESOURCE DUE DILIGENCE:	It is crucial to consider cultural and employees issues upfront for success of any venture. If human resource issues are ignored then key people may leave unexpectedly resulting in complete disturbance of operational synergy between the parties. Thus, valuable operational synergies get disturbed when cultural differences between companies aren't understood or are ignored.
INFORMATION SECURITY DUE DILIGENCE	It is often undertaken during the information technology procurement process to ensure that risks are uncovered.
ETHICAL DUE DILIGENCE	It measures the ethical character of the company and identifies the possibility of the ethical risks, which is not a non financial risk. It helps the organization to decide whether the partner is ethically viable. It is an effective reputation management tool for any type of business decisions.

2) LEGAL DUE DILIGENCE:
It covers the legal aspects of the business transaction, liabilities of the target company, potential legal pitfalls and other related issues.
Apart from document verification, it includes independent check with regulatory authorities.

3) FINANCIAL DUE DILIGENCE (including Tax due diligence):
It analyses all the financial, commercial, operational and strategic assumptions being made. It includes review of accounting policies, review of internal audit procedures, cash flow etc.

It provides peace of mind to buyer by analyzing and validating all financial, commercial, operational and strategic assumptions being made.

The tax due diligence comprises and analysis of:
- Tax compliances
- Tax contingencies
- Transfer pricing
- Identification of risk areas
- Tax planning and opportunities

FACTORS TO BE KEPT IN MIND WHILE CONDUCTING DUE DILIGENCE:

1. OBJECTIVE AND PURPOSE:

A key step in any due diligence exercise is to develop an understanding of the purpose of the transaction. The following points must be kept in mind in this regard:

a. Be clear about your expectations in terms of revenue, profits and the probability of the target company.
b. Consider whether you have resources to make the business succeed
c. Consider whether the business gives you the opportunity to put your skills and experience to good use.
d. Learn as much as you can about the industry you are interested in.

2. PLANNING THE SCHEDULE:

The organization should be clear about the steps to be followed in due diligence process, areas to be checked, aspects to be checked and material and information to be requested from the seller.

3. NEGOTIATION FOR TIME:

It is always better to be completely sure about all the documents and other aspects from the due diligence. If the seller is hurriedly asking for finalization, it is always better to negotiate for more time before taking a final decision.

4. RISK MINIMISATION:

All the information should be double checked to ensure that the company does not face a lawsuit or criminal investigation. The financial are very important and one needs to be certain that the target company did not engage in creative accounting.

5. INFORMATION FOR EXTERNAL SOURCES:

The company's customers and vendors can be quite informative. It may be found from them whether the target company falls in their most favoured clients list.

Any flaws that the audit uncovers would help to negotiate down the sale price. Due diligence is a chance to get a better deal.

6. STRUCTURE OF INFORMATION:

Once the due diligence process is over, while preparing the report, information has to be structured in an organized manner in order to have a better correlation on related matters.

While preparing the report, it is advisable to be precise and only the information that has a material impact on the target company is required to be included.

STAGES OF DUE DILIGENCE:

A due diligence process can be divided into three stages

i. PRE DILIGENCE
ii. DILIGENCE REPORT
iii. POST DILIGENCE

PRE DILIGENCE:
A pre-diligence is the activity of management of paper, files and people.

It consists of:
- Signing the letter of intent and non disclosure agreement/engagement letter
- Receipt of documents from the company and review of the same.
- Identifying the issues
- Organizing the papers required for a diligence
- Creating a data room

The first and foremost in a deal for the management of the target company, is that the investor is to sign a letter of interest (LOI) or a team sheet which underlines the various terms on which the proposed deal is to be concluded. Immediately after LOI, the investor signs an NDA with various agencies.

The company would generally receive a checklist from the agency conducting the diligence. While data is being collected, it should be ensured that there are no loose ends that may arise.

During the diligence, care should be taken to adhere to certain issues as follows:
- Do not delay deadlines
- Mark each module of the checklist provided for separately
- In case some issues are not applicable, mention that its not applicable specifically
- In case some issues cannot be solved immediately, admit it.
- Put a single point contact to oversee the entire due diligence exercise
- Keep a register to track people coming in and going out.

During due diligence, care should be taken to adhere to certain hospitality issues like:
- Be warm and receptive to the professionals who are conducting diligence
- Enquire on the DD team
- Join them for lunch
- Ensure good supply of refreshments.
- In case of any corrections, admit and specify.

DILIGENCE REPORT:
After the diligence is conducted, the professionals submit a report, which is known as due diligence report. There are certain terms used to define the outcome of these reports:
- **DEAL BREAKERS**: in this report, the findings can be very glaring and may expose various non-compliances that may arise, any criminal proceedings or known liabilities.
- **DEAL DILUTERS:** the findings may show violations, which may have an impact in the form of quantifiable penalties and in turn may result in diminishing value of the company.
- **DEAL CAUTIONERS:** it covers those findings, which may not impact the financials, non-compliances are rectifiable but it requires investors to tread a cautious path.

- **DEAL MAKERS:** reports wherein the diligence team has not been able to come across any violations leading them to submit what is called as a Clean Report. Such reports are very hard to come by and may not be a reality.

Only after the reporting formalities are over and various rectifications are carried out, the shareholder's agreement is executed.

POST DILIGENCE:

Post Diligence sometimes result in rectification of non-compliances found during the course of due diligence and other related activities such as making application for compounding of various applications/petitions for compounding etc.

TRANSACTIONS REQUIRING DUE DILIGENCE

1) MERGERS, AMALGAMATIONS AND ACQUISITIONS:

Due diligence investigation in case of mergers, amalgamations and acquisitions are generally the most thorough types of due diligence investigations. Partnerships are another time when parties investigate each other.

Some other transactions where due diligence is appropriate could be:

i. Joint venture and collaborations
ii. Venture capital investment
iii. Public offer
iv. Strategic alliance
v. Partnerships
vi. Business collaborations
vii. Outsourcing arrangements
viii. Technological collaborations

As regards the acquirer, due diligence is an opportunity to confirm the correct value of the business transaction, accuracy of the information disclosed by the target company and any potential business concerns that need to be addressed.

As regards the target company, it is ascertaining the ability of the acquirer to pay or raise funds to complete the transaction, rights that should be retained by the target company and such other aspects.

2) JOINT VENTURE AND COLLABORATIONS:

Before entering into a major commercial agreement like a joint venture or other collaboration with a company, a collaboration partner will want to carry out a certain amount of due diligence.

3) VENTURE CAPITAL INVESTMENT:

Before making an investment in any company, venture capitalist will conduct business due diligence which generally include aspects such as a review of the market for the

product of the company, background check on the founders and key management team and such other details.

4) PUBLIC ISSUE DUE DILIGENCE:

It spans the entire public issue process. The steps involve may be:

i. Decision on public issue
ii. Business due diligence
iii. Legal and financial due diligence
iv. Disclosure in prospectus
v. Marketing to investors
vi. Post issue compliance

Documents to be checked in due diligence process:
The following are some of the important documents to be checked during the process of due diligence:

- ✓ Basic information
- ✓ Financial data
- ✓ Important business agreement
- ✓ Litigation aspects
- ✓ IPR details
- ✓ Marketing information
- ✓ Internal control system
- ✓ Taxation aspects
- ✓ Insurance coverage
- ✓ HR aspects
- ✓ Environmental impact
- ✓ Cultural aspects

DATA ROOM
Concept:
A data room provides all important business documents/information which may be on financial, regulatory, IPR, marketing etc.
It provides a common platform or place, where, all records, of important business information are kept for review by the potential buyer, after signing the Non-Disclosure Agreement (NDA).

Since the data room contains all the confidential data, which may not be available for public and may relate to business process, trade secret, technology information etc, the access to data room is made after signing the Non-Disclosure Agreement.

It generally contains the following information:

- Financial documents
- Basic corporate documents
- HR/sales/marketing information
- Compliance related information
- Information published in media
- IPR details/information on litigation

Since the data room contains a lot of confidential information, provisions are made to mitigate the risk of data stealing or data destruction and thus specific provisions are made for entry, study, noting and exit from the data room.

Advantages/need for data room:

1. Removes ambiguity from the minds of buyer about the profitability, growth prospectus and sustainability.
2. Provides material information that helps in SWOT analysis.
3. It enables buyer to do a better bargain
4. May expose the weakness of the seller
5. Provides data that helps in better valuation of business

Some occasions which require creation of data room:

1. Mergers, amalgamations and acquisitions
2. Strategic alliances
3. Partnership agreements
4. Business coalitions
5. Outsourcing agreements
6. Technology or product licensing
7. Joint venture
8. Foreign collaborations
9. Venture capital investment
10. Public issue

DATA ROOM: VIRTUAL OR PHYSICAL

Data room can be physical i.e. a physical location where all the confidential and other documents are kept in a hard copy form under lock and key under the custody of a responsible person and I generally maintained at Sellers premises.

However, Physical data room is time consuming, difficult to maintain and also expensive for the buyer as the buyer must travel to the place of the seller to see the documents.

To save time and cost, to provide a fast and expeditious checking of documents and data, the concept of virtual data room was introduced and it proved to be a boon for due diligence exercise.

Virtual data room is a site where all the required information is stored in a digitized or electronic format.

Steps for creation of virtual data room:

i. Demands of the prospective bidders are identified
ii. Identify a trustworthy data room service provider, if necessary and enter into necessary agreement with them.
iii. Creation of a website where all the required documents are stored with Internet security, restriction to access the site etc.
iv. Signing of NDA with prospective bidders.
v. Service agreement with data room service provider and the prospective bidder

vi. Prospective bidders are given user id and pass word of the virtual data room for providing exclusive access.

Major advantages of virtual data room:

1. Savings in costs
2. Savings in time
3. More comfort to the buyer and seller
4. Availability of information at any time of the day
5. Enables multiple prospective bidders to access the virtual data room
6. East to set up
7. More secured
8. Improved efficiency
9. Copying may be restricted
10. Closure may happen any time

Disadvantage:

- Limited interaction between parties
- Lack of clarity of documents loaded on the data site
- Confidentiality of information is at stake.
- Inability to copy or print information is sometime poses a hurdle.

COMPARISON OF PHYSICAL DATA ROOM AND VIRTUAL DATA ROOM

PHYSICAL DATA ROOM	VIRTUAL DATA ROOM
Documents are in tangible formats	Documents are in electronic format
Security of the documents depends on the integrity of the person in charge of the data room.	It is more secured as the security is set up electronically with the help of user id and password
It involves high cost for set up	It involves lower cost since the documents are available in electronic mode.
It is not convenient mode to review documents as documents searching may take time.	It is a convenient mode as it is faster, more efficient and accurate.
Accessibility to data room is restricted	Can be accessed any time
One to one communication of parties is possible	One to one communication of parties is not possible
Any new information must be conveyed manually to all the concerned parties	Any new information can simply be posted on the site and becomes easily accessible by the parties as per their convenience.
Access to document cannot be completely restricted	Access to certain document can be easily restricted

COMPARISON OF AUDIT AND DUE DILIGENCE

AUDIT	DUE DILIGENCE
Scope is limited to financial analysis	It includes financial as well as non financial aspects to analyze
It is based on historic data	It covers and reports historic as well as future growth prospects of the organization
It is mandatory	The requirement depends on the transaction to transaction.
It gives positive assurance about the true and fair accounts	It gives negative assurance about any risk involved in the transaction
Audit is a recurring event	It is an occasional event
Audit is always uniform	The nature of due diligence varies from transaction to transaction.

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is executed on this_____ Day of _____, 2016 at (place) by and between:

MNO Limited, a company incorporated under the companies Act, 2013 and having its registered office at _____ carrying on the business of builders and developers, represented by Mr._____ CS (hereinafter called as Target Company) of the one part, which expression shall, unless repugnant to the context, include its representatives, assigns and liquidators thereof

And

Shri. X, son of Shri. Y, Residence of _____ (hereinafter called as Recipient) of the other part, which expression shall unless repugnant to the context, includes his legal heirs, executors, administrators, representatives and assigns of the other part.

WHEREAS the recipient is acting as an expert advisor to KBC limited in connection with the takeover of Target Company.

AND WHEREAS the KBC limited requested the target company to provide the recipient with the Data room access and access to relevant information;

AND WHEREAS, the Target company, after having considered the proposal of KBC limited has agreed to allow the access to the recipient subject to prior execution of this NON DISCLOSURE AGREEMENT.

NOW THIS AGREEMENT HEREBY WITNESSETH AS UNDER:

1. Confidential information shall mean any information disclosed by target company to the receiving party or otherwise communicated to him and includes any information obtained from examination, all knowledge information or materials whether of a technical or financial nature or otherwise.
2. Subject to exceptions given in clause 3, the receiving party agrees:

a) To keep the information confidential and not to disclose the same to any third party without the prior written consent of the disclosing party.
b) To restrict the access to the confidential information to only those employees and officers who need to know the same strictly for the purpose.
c) Not to use the confidential information disclosed to it under this agreement for any purpose other than the purpose of KBC Limited.
d) To keep the confidential information In the possession of authorized person and store it securely.

3. **Exceptions:** the restrictions and protections in this agreement as to the disclosure shall not apply:
   a. If the information, at the time of disclosure, is already published or otherwise available publicly.
   b. If the information is independently developed by the receiving party without any reference or access to confidential information.
4. No party shall assign its rights and or obligations pursuant to this agreement without the prior written consent of the other party.
5. This agreement shall be constructed and governed in all respects in accordance with the laws of India and the parties hereby submit to the jurisdiction of the Indian Courts.

IN WITNESS WHEREOF THE TARGET COMPANY (THROUGH ITS AUTHORISED REPRESENTATIVE) AND THE RECEIVER have set their respective hands to this NON-DISCLOSURE agreement on this day, month and the year above written in the presence of the following witness:

WITNESSES:

1. NAME OF WITNESS — Parties:

Father's name (signature) — Target Co.

(Signature)

Address

2. NAME OF WITNESS — Parties:

Father's name (signature) — Mr. X

(Signature)

Address

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ISSUE OF SECURITIES

Primarily, issues can be classified as a Public, Rights or preferential issues (also known as private placements). Public issues are further classified into Initial Public Offerings (IPO) and Further Public Offerings (FPO).

Initial Public Offer (IPO)

Initial Public Offering is when an unlisted company makes either a fresh issue of securities for the first time to the public. This paves the way for listing and trading of the issuer's securities.

Further Public Offer (FPO)

Further Public Offering is when an already listed company makes either a fresh issue of securities to the public. It follows the IPO that is why it is called as Further Public Offering or Follow On Public Offering.

RIGHTS ISSUE

Under a rights issue, the securities are first offered to the existing shareholders in a particular ratio. The existing shareholders have pre-emptive right to be offered the capital before the same are offered to the public.

BONUS ISSUE

When an issuer makes an issue of securities to its existing shareholders as on a record date, without any consideration from them, it is called a bonus issue.

PRIVATE PLACEMENT

When an issuer makes an issue of shares or convertible securities to a select person or group of persons not exceeding 200 in a financial year and which is neither a rights issue nor a public issue or bonus issue, it is called a private placement. Private placement of shares or convertible securities by listed issuer can be of 3 types:

Preferential Issue:	When a listed issuer issues shares or convertible securities to a select group of persons, it is called as preferential issue.
Qualified Institutional Placement:	It means allotment of eligible securities by a listed issuer to Qualified Institutional Buyer on private placement basis.
Institutional Placement Programme:	When a listed issuer makes a further public offer of equity shares or offer for sale of shares by promoter, the offer allocation and allotment of such shares is made only to QIB's for the purpose of achieving minimum public shareholding, it is called an IPP.

SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009 (AS AMENDED)

The SEBI (ICDR) Regulation contains rules and regulations for various aspects relating to issue.

These regulations are applicable in the following cases:

- A public issue.
- A rights issue (if the value of securities offered is Rs. 50 lakh or more)
- A preferential issue.
- An issue of Bonus shares by a listed issuer.
- A qualified institutional placement by a listed issuer.
- An issue of IDR.
- An issue of GDR/ADR.

IMPORTANT ASPECTS OF ICDR REGULATIONS

ELIGIBILITY FOR MAKING PUBLIC OFFER [REGULATION 26]

The following are the conditions for making initial public offer:

1. The issuer has net tangible asset of at least Rs. 3 Cr. in each of the preceding 3 full years of which maximum 50% can be held in monetary assets.

   - In case if more than 50% of net tangible assets are held in monetary assets, the issuer has to make firm commitment to utilize such excess monetary assets in the business or projects.
   - The limit of 50% will not be applicable if the public offer is made entirely through Offer for Sale.

2. It has a minimum average pre-tax operating profit of Rs. 15 crores during the 3 most profitable years out of the immediately preceding 5 years.
3. It has a net worth of at least Rs. 1 crore in each of the preceding 3 full years.
4. The aggregate of the proposed issue and all issued during a financial year does not exceed 5 times its pre-issue net worth as per the audited balance sheet of the preceding financial year.
5. In case if the company has changed its name, at least 50% of the revenue in the preceding one year should have come from the activity as suggested by new name.

An issuer not satisfying the conditions stipulated above, may make an IPO if the issue is made though book-building process and issuer undertakes to allot at least 75% of the offer to QIB and to refund full subscription money if it fails to make the said allotment.

No issuer shall make an IPO if there are any outstanding convertible securities or any right, which would entitle any person with any option to receive equity shares, subject to certain exceptions.

However, it should be noted that the above restriction shall not apply if the outstanding options relate to ESOP or when the securities are required to be converted on or before the date of filing RHP/Prospectus as the case may be.

OTHER IMPORTANT POINTS:

- An issuer may make an IPO of Convertible Debt Instruments without making a prior public issue of its equity shares and listing thereof.
- An issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than 1000.

LIMIT REGARDING MONEY PROPOSED TO BE SPENT ON GENERAL CORPORATE PURPOSES (REGULATION 4(4))

The amount for general corporate purposes, as mentioned in the objects of the issue in the draft offer document filed with the Board shall not exceed 25% of the amount raised by the issuer by issuance of specified securities.

WHO IS NOT ELIGIBLE TO MAKE PUBLIC OFFER

- The issuer, any of its promoter, promoter group or director are debarred from accessing the capital market by the SEBI
- If any of the promoters, directors or persons in control of the issuer was or is also a promoter, director or person in control of any other company which is debarred from accessing the capital market
- If the issuer is in the list of willful defaulters published by RBI or defaults in payment of interest on debt instrument for more than 6 months.
- Those who have not made application in any recognized stock exchange for listing of securities.
- Those who has not entered into an agreement with a depository for dematerialization of securities.
- Companies where all existing party paid up shares are not either made fully paid up or forfeited.
- The companies that has not made firm arrangement of finance.

CONDITIONS AS TO THE ISSUE OF WARRANTS ALONG WITH PUBLIC ISSUE

Warrants may be issued along with Public issue subject to the following:

- The tenure of such warrants shall not exceed 18 months from their date of allotment in the Public/Right issue
- Not more than one warrant shall be attached to one specified security
- The price or the conversion formula of the warrant shall be determined upfront and at least 25% of the consideration amount shall also be received upfront
- In case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant shall be forfeited by the issuer.

DUE DILIGENCE - IPO/FPO

When the Due diligence is carried out as part of the public offer, its scope becomes widened and the due diligence becomes a tool, which shows the company the way to optimize its potential and thereby increasing its value to potential investors.

The due diligence spans the entire public issue process. Pre-IPO due diligence process will result in a gap analysis. It will result in the critical analysis of the control, accounting and reporting systems of the company and a critical appraisal of its key personnel.

THE DUE DILIGENCE PROCESS ASPIRES TO ACHIEVE THE FOLLOWING:

- To assess the reasonableness of historical and projected earnings and cash flows.
- To identify key vulnerabilities, risks and opportunities.
- To gain an intimate understanding of the company and the market.
- To set in motion the planning for the post-IPO operations.

It will result in critical analysis of the control, accounting and reporting systems of the company and a critical appraisal of key personnel.

STEPS INVOLVED IN DUE DILIGENCE ARE AS FOLLOWS:

- Decision on Public issue
- Business due diligence
- Legal and Financial due diligence
- Disclosures in prospectus
- Marketing to investors
- Post issue compliance

THE KEY AREAS TO BE FOCUSSED DURING THE DUE DILIGENCE OF IPO/FPO ARE AS FOLLOWS:

- **The financial statements**- To ensure its accuracy.
- **The assets** - To confirm their value and title.
- **The employees**- Identification and evaluation of key personnel.
- **Sales strategy-** Analyzing the policies and procedures in place and assessing what works and what not.
- **Competition-** To identify the threats.
- **Market -** To identify the driving forces and finalize sales strategy
- **The systems** - To know how efficient are the systems.

- **Company contracts and leases -** To identify the risks and obligations.
- Other important documents.

CHECKLIST ON MAJOR IPO COMPLIANCES UNDER SEBI (ICDR) REGULATIONS, 2009

APPOINTMENTS

- Check whether the issuer has appointed one or more merchant bankers at-least one of whom shall be lead merchant banker
- Check whether the issuer has appointed SEBI registered intermediaries in consultation with lead merchant banker
- Ensure that the merchant banker is not acting as registrar to the issue in which it is also handling post issue obligations
- Check whether the issuer has appointed syndicate members in respect of issue through book building
- Check whether the issuer has appointed registrars, who has connectivity with both the depositories.

FILINGS/APPROVALS/SUBMISSIONS

- Check whether the draft offer document is filed with SEBI at least 30 days prior to registering a prospectus
- Check whether the draft offer document is made available to the public for at least 21 days from the date of such filing with SEBI
- Check whether observations and comments received from SEBI/Public is carried out while registering of prospectus with ROC
- Check whether the statement on the comments received from public on draft offer documents is filed with SEBI.
- Check whether the company has obtained in principle approval in respect of IPO/FPO from all the exchanges where the securities are proposed to be listed.
- Ensure that the offer document/red herring prospectus contain necessary disclosures.
- It should be noted that the contents of the offer documents hosted on Websites are the same as printed versions filed with ROC.
- Ensure that the financial documents and other contents are not more than 6 months old from the opening of the issue.

PRE-ISSUE DUE DILIGENCE CERTIFICATES

Ensure that the lead merchant banker has submitted due diligence certificate with SEBI as follows:

- Filing of offer document with SEBI
- At the time of registering prospectus with ROC

- Immediately before opening of the issue
- After opening and before it closes for subscription

TIME LIMITATION IN OPENING OF ISSUE

- 12 months from the date of issuance of observations from the SEBI on draft offer document
- If there are no observations, then within three months from the date of receipt of draft offer document or from the date of giving satisfactory reply to SEBI on any clarifications.
- An issue shall be opened after at least 3 working days from the date of registering the red herring prospectus with the Registrar of Companies.

(In case of Fast Track Issue, the issue shall be opened within 90 days from the registration of prospectus with ROC)

OTHER COMPLIANCES

- Ensure that the company has received minimum subscription of 90% of the offer.
- Ensure that the number of prospective allottees is at least 1000.
- Ensure that the issue size of **more than Rs. 100 Cr.** (w.e.f. 31.05.17) has been monitored by a Public financial institution or by a Scheduled commercial bank.
- Ensure that entire subscription money, if made in calls, is called within 12 months from the date of allotment.
- However, if a monitoring agency is appointed, it shall not be necessary to call the outstanding subscription money within 12 months.
- Ensure that the securities are allotted and the excess money are refunded within 15 days from the closure of the offer.
- Ensure that all the pricing norms are followed and ensure that the floor price is not less than the face value of the specified securities.
- If the issuer makes a public issue through book building process, such issue shall be underwritten by book runners or syndicate members.

PROMOTER'S CONTRIBUTION: REGULATION 32

Ensure that the promoter's contribution is as follows:

Situation	Promoter's contribution
In case of Initial Public Offer	Not less than 20% of the post issue capital **Note :** In case if the post issue shareholding of promoters is less than 20%, then in such a case Alternative Investment Fund may contribute (subject to a maximum of 10%)
In case of FPO	Either 20% of the proposed issue size or 20% of the post issue capital

In the case of composite issue	Either 20% of the proposed issue size or 20% of the post issue capital excluding the rights issue

Other Important Points In Connection With The Promoters Contribution

- Ensure that the promoter's contribution is kept in an escrow account with a scheduled banks and shall be released to the issuer along with release of issue proceeds
- The Promoters shall ensure contribution at least one day prior to the date of opening of the issue.
- If the amount of promoters contribution is in excess of Rs. 100 Cr. , then in such a case, at least Rs. 100 Cr. must be brought before the opening of the issue and the remaining may be brought before the calls are made to the public.
- If the promoter's contribution has already been brought in and utilized, the issuer shall give a cash flow statement disclosing the use of such funds in the offer document.
- Ensure that the securities ineligible for promoter's contribution are not included while calculating the above limits

The Promoters contribution shall be computed on the basis of post-issue expanded capital:

a. Assuming full proposed conversion of convertible securities into equity shares
b. Assuming exercise of all outstanding ESOP.

SECURITIES NOT ELIGIBLE TO BE INCLUDED IN THE PROMOTERS CONTRIBUTION: REGULATION 33

- Specified securities acquired during the preceding 3 years for consideration other than cash or acquired due to bonus issue by utilization of revaluation reserves or unrealized profits of the issuer.
- Specified securities acquired during the preceding 1 year at a price lower than the price at which securities are being offered to public.
- However, the above restriction is not applicable if the promoters pay the difference to the issuer or if shares are acquired under section 230/231, scheme approved by the NCLT.
- Specified securities allotted to Promoters and alternative investment funds during the preceding one-year at a price less than the issue price against the funds brought in by the promoters during that period, in case the issuer is formed by conversion of one or more partnership firms.
- Specified securities pledged with any creditors.

REQUIREMENT OF PROMOTER'S CONTRIBUTION NOT APPLICABLE IN CERTAIN CASES

The requirement of promoter's contribution shall not apply in following cases:

- The issuer does not have any identifiable promoter
- In case of FPO if the shares of the issuer are frequently traded for a period of at-least 3 years and it has a track record of dividend payment for at-least immediately preceding 3 years.
- Rights Issue

LOCK IN REQUIREMENTS

REGULATION 36

In a public issue, the lock in provisions for the specified securities held by the promoters are as under:

(a) Minimum promoter's contribution including contribution made by AIF shall be locked in for a period of 3 years from the date of commercial production or date of allotment in the public issue, whichever is later.

(b) Promoters holding in excess of minimum promoters contribution shall be locked in for a minimum period of 1 year.

REGULATION 37

In case of an Initial Public Offer, the entire pre-issue capital held by persons other than promoters shall be locked in for a period of 1 year However, this does not apply to shares allotted to employees under ESOP granted prior to IPO and to equity shares held by a Venture Capital Fund/AIF provided these shares were locked in for 1 year from the date of purchase.

REGULATION 38

The lock in requirement shall not apply with respect to specified securities lent to stabilising agent under Green Shoe Option. However, the specified securities shall be locked in for the remaining period from the date on which they are returned to the lender.

REGULATION 39

Specified securities held by promoters and locked in may be pledged with any Scheduled Commercial Bank or Public Financial Institution as collateral security for loan granted by such bank or institution subject to certain conditions.

REGULATION 40

Subject to provisions of the SERI (SAST) Regulations 2011, the specified securities held by the promoters and locked in may be transferred to another promoter or any person of the promoter group. The lock in for the remaining period shall continue with the transferee.

MINIMUM OFFER TO THE PUBLIC: REGULATION 41 READ WITH RULE 19 OF SCRA, 1957

i. At least 25% of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to Rs. 1,600 Cr.
ii. At least such % of each class or kind of equity shares or convertible debentures equivalent to the value of Rs. 400 Cr., if the post issue capital calculated at offer price is more than Rs. 1600 Cr. but less than or equal to Rs. 4,000 Cr.
iii. At least such 10 % of each class or kind of equity shares or convertible debentures, if the post issue capital of the company calculated at offer price is above Rs. 4,000 Cr.

RESERVATION ON COMPETITIVE BASIS: REGULATION 42

Reservation on competitive basis means reservation wherein specified securities are allotted in proportion of the number of securities applied for in respect of a particular reserved category to the number of specified securities reserved for that category.

The issuer may make reservation on competitive basis out of the issue size excluding promoter's contribution and net offer to public in favour of the following categories of persons:

i. Employees (Excluding promoters and immediate relatives of the promoters)
ii. Shareholders (other than promoters) of listed group companies
iii. Persons who are associated with the issuer as depositors, bond-holders.

Reservation on competitive basis cannot be made in respect of the following persons who are not eligible:

- If promoting companies are financial institutions, then reservation cannot be made for the shareholders of such promoting companies
- If the issue is through book building process then the reservation cannot be made for the issue management team, syndicate members, their promoters, directors, employees and for the group or associate companies of the issue management team.

The reservation on competitive basis shall be subject to the following conditions:

- The aggregate of the reservations for employees shall not exceed 5% of the post issue capital of the issuer
  Note: The Value of allotment to any employee shall not exceed Rs. 2,00,000.
- Reservation for shareholder shall not exceed 10% of the issue size
- Reservation for business associate shall not exceed 5% of the issue size
- Any unsubscribed portion in any reserved category may be added to any other reserved category.

- ❖ No further application for subscription shall be entertained from any person (except employee and retain individual investor) in favour of whom reservation on competitive basis is made.

ALLOCATION IN NET OFFER TO PUBLIC: REGULATION 43

No person shall make an application in the net offer to Public category for that number of specified securities which exceeds the number of specified securities offered to Public.

IF THE ISSUE IS MADE THROUGH BOOK BUILDING PROCESS (WHEN ISSUER SATISFIES ALL THE CONDITIONS OF ELIGIBILITY FOR AN IPO)

a. Not less than 35% to retail individual investors
b. Not less than 15% to Non-institutional investors
c. Not more than 50% to QIB's (out of which 5% should be allotted to Mutual Funds)

IF THE ISSUE IS MADE THROUGH BOOK BUILDING PROCESS (WHEN ISSUER DOES NOT SATISFY ELIGIBILITY CONDITIONS FOR IPO AND AGREES FOR OTHER STIPULATIONS)

a. Not more than 10% to retail individual investors
b. Not more than 15% to Non institutional investors
c. Not less than 75% to QIB (out of which 5 % should be allotted to Mutual Funds)

OTHER IMPORTANT POINTS

- In an issue made through book building process, the issuer may allocate up-to 60% of the portion available for QIB allocation to Anchor Investor in accordance with the conditions specified.
- In an issue made other than book building process, allocation in the net offer to the Public category shall be made as follows:
  - Minimum 50% to retail individual investors and
  - Remaining to Individuals other than retail and other investors including body corporates
  - The unsubscribed portion in either of the above categories may be allocated to the applicants in the other category.

PERIOD OF SUBSCRIPTION REGULATION 46

Ensure that the public issue is kept open at least for 3 working days but not more than 10 working days including the days for which the issue is kept open in case of revision in price band.

ADVERTISEMENT

PRE-ISSUE (REGULATION 47)

Ensure that after registering the red herring prospectus/Prospectus with the ROC, a pre-issue advertisement in the prescribed format and with the required disclosures is made in One English daily newspaper with wide circulation, One Hindi National Newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the company is situated.

OPENING AND CLOSING (REGULATION 48)

Ensure that advertisement on issue opening and closing is made in the specified format.

POST-ISSUE (REGULATION 66)

Ensure that an advertisement giving various details as required is released within 10 days from the date of completion of various activities in at least one English/Hindi/Regional newspaper having wide circulation at the place where registered office of the company is situated.

IMPORTANT POINTS TO BE TAKEN CARE RELATING TO ADVERTISEMENT / PUBLICITY MATERIAL

- Ensure that any person connected with the issuer does not issue any material/advertisement indicating the investor's response or status of subscription during the period when the public issue is still open for subscription by the public.
- Ensure that any public communication contains only factual information and does not contain projections/estimates etc.
- Ensure that the announcement regarding closure of the issue is made only after the receipt of minimum subscription.
- Ensure that no advertisement or material contains any offer of incentive whether direct or indirect.
- Ensure that no advertisement contains complex or technical language to distract the investors.
- Ensure that no advertisement contains statements which promise or guarantee rapid increase in profit.
- Ensure no advertisement displays models, caricatures, celebrities, fictional characters or like.
- Ensure that no issue advertisement appears in the form of crawlers (narrow strip at the bottom of television screen)
- Ensure than no issue advertisement contains slogans, expletives or unsubstantiated titles.
- If an advertisement contains highlights, it shall also contain risk factors with equal importance in all respects including print size of not less than 7.

MINIMUM APPLICATION VALUE: (REGULATION 49)

Ensure that minimum application value is kept between Rs. 10,000 to Rs. 15,000. Minimum application value shall be with reference to the issue price of the specified securities and not with reference to the amount payable on application.

Minimum sum payable on application shall be 25% of the issue price. Provided that in case of Offer for Sale, the sale price payable for each specified security shall be brought in at the time of application.

APPOINTMENT OF COMPLIANCE OFFICER (REGULATION 63)

The issuer shall appoint compliance officer who shall be responsible for monitoring the compliance of securities law and redressal of investor's grievances.

POST ISSUE DILIGENCE

1) The lead merchant bankers shall exercise due diligence and satisfy himself about all aspects of the issue.
2) The lead merchant banker shall call upon all the parties to fulfil their respective obligations as disclosed by them in the offer document.
3) The post issue merchant banker shall continue to be responsible for post issue activities till the subscribers have received the securities certificate, credit to de-mat account or refund
4) The responsibility of the merchant banker shall continue even after the completion of the issue process.

POST ISSUE REPORTS

The lead merchant banker shall submit post issue reports as follows:

1) Initial post issue report in specified form within 3 days of closure of the issue
2) Final post issue report in specified format within 15 days of the date of finalisation of allotment or refund of money as the case may be.

ROLE OF COMPANY SECRETARY IN AN IPO

A practicing Company Secretary can render plethora of services in an IPO. Some of which are as under:

PLANNING STAGE:	**DUE DILIGENCE:**
i. Deciding the time line	i. Company contract and leases
ii. Compliance related issues	ii. Legal and Tax issues
iii. Importance of corporate governance	iii. Corporate issues
iv. Structure of the Board	iv. Financial assets
v. Promoter's consent	v. Financial statements

vi. Method of issuance of shares	vi. Creditors & Debtors
APPOINTING ADVISORS AND OTHER INTERMEDIARIES: i. Investment bankers ii. Book Running Lead Managers iii. Issues with Depository iv. Legal Advisor v. Bankers	**OFFER DOCUMENT:** i. Drafting the offer document ii. Filing with SEBI iii. In principle approval of stock exchange iv. Filing with designated stock exchange v. Complying with comments received vi. Filing with ROC
ISSUE PERIOD: i. Adhering to Issue opening closing date ii. Compiling field reports on subscription status iii. coordinating with Registrars/Bankers	**ALLOTMENT OF SHARES:** i. Basis of allotment ii. Board meeting for allotment iii. Crediting shares in accounts iv. Dispatch of refund orders v. Payment of stamp duty
LISTING: i. Filing for listing with Designated Stock Exchange ii. Finalization of listing process	**POST ISSUE COMPLIANCES:** i. To ensure proper compliance with listing agreement ii. Redressal of shareholder complaints iii. Timely filing of required reports with ROC / SEBI / Stock exchange

DUE DILIGENCE -ISSUES OTHER THAN IPO/FPO

DUE DILIGENCE - PREFERENTIAL ISSUE

Important points to remember are as follows:

- **Special resolution** shall be passed by the shareholders and it shall specify the **relevant date** on the basis of which price of equity shares shall be calculated
  Relevant date is the date 30 days prior to the date on which the meeting of the shareholders is held to consider the proposed preferential issue.
- All the equity shares held by the proposed allottees (if any) are in **de-materialized form.**
- Issuer has **obtained the PAN** of the proposed allottees.
- Shares should not be allotted to persons who has sold any equity shares of the issuer in preceding 6 months.
- The issuer shall place a copy of the certificate of its statutory auditor before the general meeting of the shareholders.
- Allotment shall be **completed within 15 days** from the date of passing SR.
- If convertible securities are issued by way of preferential allotment, then the **tenure** of the convertible securities **shall not exceed 18 months** from the date of their allotment.
- The equity shares shall be allotted at a price not less than higher of the following:
  - ✓ The average of the weekly high and low closing price in the 26 weeks preceding the relevant date **OR**
  - ✓ The average of the weekly high and low of the closing price during 2 weeks preceding the relevant date.
- Full consideration of specified securities shall be paid by allottees at the time of allotment of such specified securities.
- If specified securities on preferential basis are allotted to promoter or promoter group, it **shall be locked in for a period of 3 years** from the date of allotment.

DUE DILIGENCE IN CASE OF RIGHTS ISSUE OF SHARES

If a company having share capital, proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to existing shareholders only.

Unless the AOA of the company otherwise provide, the offer 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 shall contain a statement of this right.

PROCEDURE FOR ISSUE OF RIGHTS SHARES

- If the Authorized capital is not sufficient to accommodate the Rights Issue, then the Authorized Capital should be increased.
- The company shall give an undertaking that the entire share capital of the company is listed with the stock exchange and are fully paid up.
- The offer shall be made by notice specifying the number of shares offered and limiting the time not being less than 15 days and not exceeding 30 days from the date of offer. If offer is not accepted within this period, it shall be deemed to have been declined.
- The notice shall be sent to all the existing shareholders at least 3 days before the opening of the issue.
- The issuer shall issue an advertisement for rights issue containing the required details therewith.
- The shares declined by the existing shareholders can be disposed off by the company in a manner, which is not disadvantageous to the company and the shareholders.
- 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 fees.
- Share certificates should be delivered within a period of 2 months from the date of allotment or details should be intimated to the depository.

DUE DILIGENCE IN CASE OF EMPLOYEE STOCK OPTION

The SEBI has notified new regulations called SEBI (Share Based Employee Benefits) Regulations, 2014, which have replaced the erstwhile ESOP guidelines.

TYPES OF SCHEME COVERED UNDER THESE REGULATIONS:

- Employee Stock Option Scheme
- Employee Stock Purchase Scheme
- Stock Appreciation Rights Scheme
- General Employee Benefit Scheme
- Retirement Benefit Scheme

A company can offer shares through ESOP to their employees through Ordinary resolution subject to the conditions specified.

Here "Employee" means

A permanent employee of the company, its subsidiary, holding or associate company or a director (other than Independent Director).

However, employee does not include an employee who is a promoter or a person belonging to the promoter group or a director who directly or indirectly holds more than 10% of the equity of the company.

PROCEDURE FOR ISSUE OF ESOP

1. Convene a Board meeting to approve the notice of general meeting to pass the **Ordinary resolution** along-with explanatory statement.
2. The explanatory statement shall contain details regarding total number of stock options to be granted, classes of employees, exercise price, lock in period (if any) and such other details.
3. Hold a general meeting, **pass Ordinary resolution.**
4. The companies granting option to its employees pursuant to ESOS will have the freedom to determine the exercise price.
5. The company may by another resolution vary the terms of ESOS provided such variation is not prejudicial to the interests of the option holders.
6. There shall be a minimum period of one year between grant of option and vesting of option.
7. The employee shall not have any right to receive dividend or vote till shares are issued on exercise of option.
8. The option granted to employees shall not be transferable to any person.
9. The Directors report shall contain the details of the ESOS such as options granted, options vested, options exercised, exercise price and such other details.
10. The Company shall maintain a register of stock option in **Form no. SH-6** at the registered office of the company
11. Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in **PAS-3** along-with fees.
12. Deliver the share certificate of allotted shares within 2 months from the date of allotment.

DUE DILIGENCE IN CASE OF ISSUE OF BONUS SHARES

SOURCE OF BONUS SHARES

A company may issue fully paid up bonus shares to its members, in any manner whatsoever, out of -

- Its free reserves
- The securities premium account or
- The capital redemption reserve account

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

CONDITIONS FOR ISSUE OF BONUS SHARES

The following conditions must be satisfied before issuing bonus shares

- Bonus issue must be authorized by **AOA.**
- It has been recommended at Board meeting and authorised in the general meeting of the company. Thus first hold a Board meeting to approve the notice of the general meeting for passing the resolution.
- Hold General meeting and pass the resolution approving bonus issue.
- Ensure that the company has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it.
- Ensure that the company has not defaulted in respect of the payment of statutory dues of the employees.
- The partly paid up shares, if any, shall be made fully paid up.
- Within 30 days of allotment, a return of allotment in form **PAS-3** shall be filed with the registrar.
- Share certificate must be delivered to the shareholders within 2 months from the date of allotment.

DUE DILIGENCE IN CASE OF QUALIFIED INSTITUTIONAL PLACEMENT

- Check the copy of a special resolution approving the QIP and whether form MGT-14 was filed or not.
- Check if the minimum number of allottees were 2 (in case issue size is less than or equal to Rs. 250 crores or 5 (in case issue size is greater than Rs. 250 crores).
- Ensure that no single allottees get more than 50% of the issue size.
- Check the copy of the Board resolution for allotment with respect to completion of allotment within a period of 12 months from the date of passing the resolution.
- A qualified merchant banker shall be appointed.
- The QIP shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class during the preceding 2 weeks.
- Minimum of 10% shall be allotted to mutual funds, no allotment shall be made to any QIB who is a promoter or any person related to the promoters of the issuer.
- The aggregate of the qualified institutional placement and all previous QIP made by the issuer in the same financial year shall not exceed 5 times the net worth.
- The tenure of the convertible or exchangeable securities shall not exceed 60 months from the date of allotment.

ISSUE OF SECURITIES BY SMALL AND MEDIUM ENTERPRISES

SME EXCHANGE IN INDIA

In India BSE and NSE have created SME exchanges **BSESME** and **EMERGE** respectively. The term **EMERGE** stands for Investment opportunities in emerging companies.

TERMS AND CONDITIONS FOR SME EXCHANGE:

i) SME having post issue face value capital of up-to Rs. 10 crores can get listed on SME exchanges.
ii) SME having a post issue face value capital of more than Rs. 10 crores up-to Rs. 25 crores have the option to gets its shares listed either on the main board of the exchange or on SME exchange.
iii) SME having post issue face value capital of more than Rs. 25 crores have to list on or migrate to main board of the exchanges.
iv) The minimum application and trading lot size shall not be less than Rs. 1,00,000.
v) The existing members would be eligible to participate in SME exchange.
vi) The issue shall be 100% underwritten and the merchant bankers shall underwrite 15% in their own account.
vii) Market making is compulsory for a period of minimum 3 years from the date of listing of securities on SME exchange and the merchant banker should ensure market making through stock brokers of SME exchange.

SEBI (ISSUE & LISTING OF DEBT SECURITIES) REGULATIONS, 2008 (AS AMENDED)

GENERAL CONDITIONS

- Ensure that the issuer/person in control of the issuer promoter has not been restrained or prohibited or debarred by SEBI from accessing the securities market or dealing in securities.
- An application is made to stock exchange for listing and in principle approval is being obtained
- Ensure that the credit rating has been obtained from at least one credit rating agency and disclosed in the offer document.

DISCLOSURE IN THE OFFER DOCUMENT

- Ensure that the offer document contains all material disclosures, which are necessary for the subscribers of the debt securities to take an informed investment decision.

- Ensure that the offer document contains disclosures under Companies Act and such other additional disclosures as may be specified by the SEBI

FILING OF OFFER DOCUMENT

- Ensure that the offer document has been filed with designated stock exchange through lead merchant banker.
- Ensure that the draft offer document has been made public by posting the same on the website of the designated stock exchange
- Ensure that all the comments received on the draft offer document are suitably addressed
- Ensure that the lead merchant banker and the debenture trustee furnishes a due diligence certificate to SEBI.

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Ensure that the issuer makes an advertisement on or before the issue opening date and such advertisement contains all the required disclosures

PRICE DISCOVERY

Ensure that the issuer may determine the price of debt securities in consultation with the lead merchant banker and the issue may be at a fixed price or through book building.

TRUST DEED

Ensure that a trust deed for securing the issue of debt securities is executed by the issuer in favour of the debenture trustee within 3 months of the closure of the issue.

REDEMPTION AND ROLL OVER

Ensure to redeem the debt securities in terms of the offer document

PROCEDURE FOR ROLL OVER OF NON-CONVERTIBLE PORTION OF PARTLY CONVERTIBLE DEBT INSTRUMENTS UNDER SERI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS

Where it is desired to roll over the debt securities issued, ensure to pass a special resolution of holders of such securities and file such resolution with ROC as well as stock exchange.

The non-convertible portion of partly convertible debt instruments issued by a listed issuer, the value of **which exceeds Rs. 50 lakh**, may be rolled over without change in the interest rate, subject to the following conditions

- 75% of the holders of the convertible debt instruments of the issuer have, through a resolution, approved the roll over through postal ballot.
- the issuer has sent , along-with notice, an auditor's certificate on cash flows of the issuer and with comments on the liquidity position of the issuer.
- The issuer has undertaken to redeem non-convertible portion of the partly convertible debt instruments of all the holders of the convertible debt instrument 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 6 months prior to the due date of redemption and has been communicated to the holders of the convertible debt instruments, before the roll over.
- 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.

The creation of the fresh security and execution of fresh trust deed shall not be mandatory if the existing trust deed or the security documents provide for the continuance of security till redemption of secured convertible debt instruments.

Ensure to redeem the debt securities to all the debt security holders who have not given their consent to the roll over.

OBLIGATIONS OF DEBENTURE TRUSTEE

- Ensure that the special purpose entity has made arrangements with registered depositories for dematerialization of securitized debt instrument
- Ensure that the special purpose entity has made an application for listing to one or more recognized stock exchanges
- Ensure that the credit rating is obtained from at least 2 credit rating agencies registered and the same is disclosed in the offer document.
- Ensure that the contents of the offer document has the required details and does not contain any misleading statements.
- Ensure to file necessary information /report post issue as directed by SEBI from time to time.
- Ensure that the other applicable rules and regulations are complied with.

ISSUE OF CONVERTIBLE DEBT INSTRUMENTS FOR FINANCING UNDER SEBI REGULATIONS

No issuer shall issue convertible debt instruments for financing replenishment of funds or for providing loan or for acquiring shares of any person who is part of the same group or who is under the same management.

However, such issue may be allowed for these purposes if the period of conversion of such debt instruments is less than 18 months from the date of issue of such debt instruments.

SECURITISATION RELATED COMPLIANCES UNDER SEBI (PUBLIC OFFER AND LISTING OF SECURITISED DEBT INSTRUMENT) REGULATIONS:

Securitized is the process of conversion of existing assets or future cash flows into marketable securities.

Securitized debt instrument means any certificate or instrument issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgaged debt, assigned to such entity and acknowledging the beneficial interest of such investors in such debt or receivable.

The following are the main features of the regulations.

- The special purpose entity will be a trust and the trustee will require registration with SEBI
- The instrument issued shall acknowledge the beneficial interest of such investors in the underlying debt or receivable assigned to the issuer.
- The regulation permit securitization of both the existing as well as future receivables

SOME MAJOR COMPLIANCES

- Ensure that special purpose entity files draft offer document with SEBI at least 15 days before proposed opening of the issue
- Ensure that that special purpose entity has made arrangements with registered depositories for dematerialization of securitized debt instrument
- Ensure that the special purpose entity has made an application for listing to one or more RSE
- Ensure that the credit rating is obtained from at least 2 credit rating agencies registered and the same is disclosed in the offer document.
- Ensure that the contents of the offer document have the required details and does not contain any misleading statements.
- Ensure to file necessary information/report post issue as directed by SEBI from time to time.
- Ensure that the other applicable rules and regulation are complied with.

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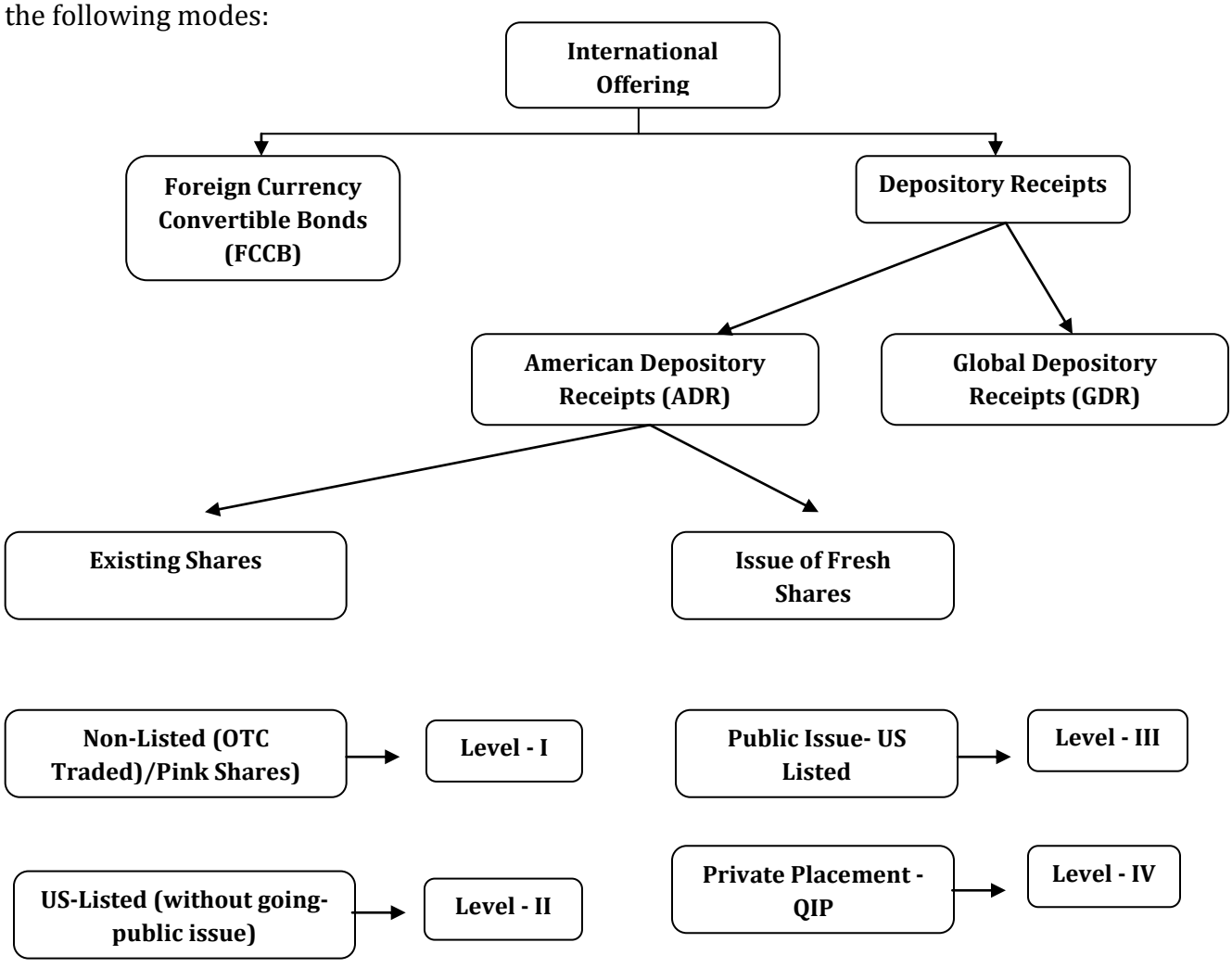
DEPOSITORY RECEIPTS DUE DILIGENCE

DEPOSITORY RECEIPTS

Depository receipts are one of the modes through which an Indian company can raise money from International Markets.

Depository Receipts is a negotiable instrument evidencing a fixed number of equity shares of the issuing company generally denominated in US Dollars. Depository Receipts are commonly used by those companies, which sell their securities in International market and expand their shareholdings abroad. These securities are listed and traded in International Stock Exchanges.

International offerings made by companies for tapping the international markets can be through the following modes:



Indian Companies have direct access to Indian Investors for raising funds. However, if Indian Companies wants to raise funds from the foreign investors, then they have to follow the strict laws of those countries and comply with other requirements. However, there is an indirect and easy way to raise funds from foreign investors available to Indian Companies in the form of ADR/GDR.

Reliance Industries was the first Indian company to be listed on NYSE and Infosys was the first Indian company to be listed on NASDAQ

ADR/GDR being a part of the FDI, should conform with Foreign Direct Investment Policy in existence.

WHY DO INVESTORS INVEST IN DR'S:

- Convenience of holding foreign securities in domestic market
- Diversification in portfolio
- No restriction in trading as depository receipts are treated as domestic securities
- Avoid currency risk

WHY DO COMPANIES ISSUE DR'S:

- An effective source of finance
- Global reputation
- Extension of shareholder's base beyond territory

TYPES OF DEPOSITORY RECEIPTS

AMERICAN DEPOSITARY RECEIPTS (ADR)

In case of ADR, the Indian Company deposits certain amount of its shares with a Domestic Custodian Bank. Then the issuer Indian company authorizes a designated bank in America known as Overseas Depository Bank to issue ADR to the investors in America. These ADR's can be purchased and traded freely in the American Stock Exchanges. This way, the Indian Company is able to enter into American Stock Market and raise funds.

Thus, ADR is a **dollar denominated** form of **equity ownership** in the form of Depository Receipts in a **non-US company.**

TYPES OF ADR'S	
Level I ADR	**UNLISTED, OTC TRADED/PINK SHEETS** ❖ This is the least expensive level to issue ADR ❖ The company issuing shares has to comply with the SEC registration requirements but can be exempted from full SEC reporting ❖ It can be traded only over the counter and cannot be listed on a stock exchange in US ❖ The electronic OTC markets are also called pink sheets
Level II ADR	**US LISTED, NON-CAPITAL RAISING TRANSACTION** ❖ It gives more liquidity and marketability ❖ It enables listing of ADR in one or more of the US Exchanges ❖ The company has to comply with registration requirements, reporting requirements of SEC
Level III ADR	**US LISTED CAPITAL RAISING TRANSACTION (FRESH ISSUE)** ❖ Has to comply with SEC registration, reporting requirement and document filing ❖ Listed and fresh capital raising is allowed
Rule 144A	Privately placed for QIB, cannot be bought on the public exchange or over the counter.

GLOBAL DEPOSITORY RECEIPTS (GDR)

GDR

Section 2(44) of the Companies Act, 2013 defines 'Global Depository Receipt' means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts.

According to Section 41, a company may after passing special resolution in its general meeting, issue depository receipts in any foreign country.

GDR's have access usually to Euro Market and US Market. The US portion of GDR's to be listed on US Exchanges need to comply with SEC requirements and the european portion should comply with EU directives.

If the Indian company does not want to stay restricted in American Market but want to expand its shareholding further across the globe, then the Indian company has to option to issue Global

Depository Receipts. GDR's are negotiable and are traded in overseas stock exchange, entitled for dividend in dollar but carry not voting rights.

An investor has the option to convert GDR into a fixed number of equity shares of the issuer company after the cooling period.

SPONSORED GDRS V. GDR'S THROUGH FRESH ISSUE OF SHARES

GDR issue can be through sponsored GDR programme or through fresh issue of shares.

In sponsored GDRs, the existing holders of shares in Indian companies can sell their shares in the overseas market. It is a process of divestment by Indian shareholders of their holdings in overseas market. The concerned company sponsors the GDR's against the shares offered for disinvestment. These shares are converted into GDR's and sold to foreign investors. The proceeds realised are distributed to the shareholders in proportion to the shares sold by them.

The scheme through which RBI has enabled the Indian Shareholders to sell their shares in overseas market, by way of Sponsored ADR/GDR is known as Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism), Scheme 1993.

PARAGRAPH 4B OF SCHEME

- An Indian company may sponsor an issue of ADR/GDR with an overseas depository against shares held by its shareholders
- The proceeds of the issue shall be repatriated to India within a period of 1 month
- The sponsoring company shall comply with the provisions of the scheme and guidelines issued in this regard by the Central Government from time to time
- The sponsoring company shall furnish full details of such issue in the form specified in the scheme to the RBI within 30 days from the date of closure of the issue.

REPORTING OF ADR/GDR ISSUE

The Indian Company issuing ADR/GDR has to furnish to the Reserve Bank, full details of such issue in the prescribed form within 30 days from the closing of the issue.

The company should also furnish a quarterly return in the prescribed form to the Reserve Bank within 15 days of the close of the calendar quarter. The return has to be filed till the entire amount is repatriated to India or utilized abroad.

TWO-WAY FUNGIBILITY SCHEME

A limited two-way Fungibility scheme has been put in place by the Government of India for ADRs/ GDR Under this Scheme, a stock broker in India, registered with SEBI, can purchase shares of an Indian company from the market for conversion, into ADRs/GDRs based on instructions received from overseas investors.

Re-issuance of ADRs GDRs would be permitted to the extent of ADRs GDRs, which have been redeemed into underlying shares and sold in the Indian market.

REGULATORY FRAMEWORK FOR GDR

REGULATORY FRAMEWORK IN INDIA IN RESPECT OF ISSUE OF GDR

ISSUE OF FOREIGN CURRENCY CONVERTIBLE BONDS AND ORDINARY SHARES (THROUGH DEPOSITORY RECEIPT MECHANISM), SCHEME 1993

GDR in India are made under this scheme and guidelines issued by the Central Government thereunder from time to time.

The important features of the scheme are as follows:

- Companies issuing GDR do not require approval of Ministry of Finance
- GDR issue shall not exceed the sectoral cap of FDI policy. If so, FIPB approval is to be obtained
- Indian companies restrained by SEBI from raising capital, is not eligible to issue GDR
- Indian companies issuing GDR has to comply with the specified pricing norms Unlisted companies floating GDR has to get its shares simultaneously listed in Indian exchanges
- The proceeds of the issue cannot be used for investing in the stock market or real estate
- The issue expenses shall not exceed the specified limit
- The company has to comply with the reporting requirements of RBI

COMPLIANCE REQUIREMENT FOR ISSUE OF ADR/GDR AS PER RBI MASTER CIRCULAR

- Unlisted companies incorporated in India are allowed to raise capital abroad, without the requirement of prior or subsequent listing initially for a period of 2 years subject to fulfilment of certain conditions.
- The capital raised abroad can be used for retiring overseas debt or for bonafide operations abroad and if not used for these purposes then the money should be repatriated to Indian within 15 days and parked with AD-1 category bank.
- The pricing and other compliances shall be followed as given in the scheme.

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

CHECKLIST UNDER COMPANIES (ISSUE OF GLOBAL DEPOSITORY RECEIPT) RULES, 2014

ENSURE THAT

- A company may issue depository receipts provided it is eligible to do so in terms of the scheme and relevant provisions of the FEMA
- The Board of directors shall pass a resolution authorizing the company to issue. Thereafter a special resolution in the general meeting must also be passed.
- The depository receipt shall be issued by an Overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of the domestic custodian bank
- The depository receipts may be issued by way of public offering, private placement or in any other mariner prevalent abroad.
- The underlying shares shall be allotted in the name of the overseas depository bank and against such shares; the overseas depository bank abroad shall issue the depository receipts.
- A holder of depository receipt may become a member of the company and shall be entitled to vote as such only on conversion of depository receipts into underlying shares.

OTHER IMPORTANT CHECKLISTS

- Company shall be eligible to access the capital market.
- Subscriber shall not be restrained from accessing capital market
- Pricing of the GDR in case of listed company shall be the price not less than higher of the following:
  - ✓ Average market closing price of the 6 preceding months preceding the relevant date
  - ✓ Average market closing price during the 2 preceding weeks preceding the relevant date
- Issue expenses (including legal expenses, lead manager charges, underwriting commission etc.) in case of non-listed GDR shall not exceed 4% and shall not exceed 7% in case of listed GDR.

LISTING AGREEMENT REQUIREMENTS

The scheme of RBI requires the unlisted companies floating GDR to get its shares simultaneously listed in Indian exchanges and thus all the provisions of the listing agreement and other filings with the stock exchanges in India has to be complied with.

SEMI (SAST) REGULATIONS, 2011 (TAKEOVER CODE)

The takeover regulations will have to be complied with when the GDR holders are entitled to exercise voting rights or exchange such depository receipts with underlying shares carrying voting rights.

REGULATORY FRAMEWORK OUTSIDE INDIA IN RESPECT OF ISSUE OF GDR

ADR/GDR to be listed in America must follow the compliance as required by SEC. The following are the important points in this regard:

Compliance with registration and reporting requirements with SEC & others

(1) A non-US company to be able to sell its DR into the United States must either be a 'reporting company' under the United States Exchange Act or be exempt from such reporting requirements.

(2) An exemption from reporting requirement is provided to Level-I ADR.

(3) **Form F-6:** It is used for the registration of depository shares as evidenced by Depository Receipts. The information is prepared by the company under the guidance of the depository bank at the inception of either an unsponsored or sponsored program. This has to be signed by both the issuer and depository and should be declared effective before issuance of DRS. the depository agreement is to be filed as an exhibit along with these documents.

(4) **Form 6K:** It is to be filed with Securities Exchange Commission by a foreign private issuer to provide information that is required to be made public in the country of its domicile.

(5) **Form 20F**: Report on Material Business Activities: It is a comprehensive Annual report of all material business activities and financial results and must comply with US GAAP. It has four distinct parts:

a. **Part I** requires full description of the issuer's business, details of its property, outstanding legal proceedings, taxation and any exchange controls that might affect security holders.

b. **Part II** requires a description of any securities to be registered, the name of the depository bank etc.

c. **Part III** requires information on any defaults upon securities and

d. **Part IV** requires various financial statements to be submitted.

(6) **Form F-1**: Indian companies planning a public offering in the US and wants to get its securities on US Exchange has to register its securities in Form F-1. This form requires certain information to be included in the prospectus such as summary information, risk factors, plan of distribution etc.

COMPLIANCE WITH EU DIRECTIVES IN RESPECT OF ISSUE OF GLOBAL DEPOSITORY RECEIPT

If GDR are listed in European exchanges, then they have to follow various directives as follows:

PROSPECTUS DIRECTIVES

The Prospectus Directives sets out the initial disclosure obligations for issuers of securities that are offered to the public or admitted to trading on a regulated market in the EU. It provides the approval for issuers, which enables them to raise capital across the EU on the basis of a single prospectus.

TRANSPARENCY OBLIGATIONS DIRECTIVE

It requires issuers to make certain periodic disclosures including annual, half yearly reports etc.

MARKET ABUSE DIRECTIVES

These directives aim are tackling insider dealing and market manipulation in the EU and the proper disclosure of information to the market.

APPROVALS REQUIRED FOR ISSUE OF DEPOSITORY RECEIPTS/FCCB

APPROVAL OF BOARD OF DIRECTORS

A Board resolution, should be passed for raising of finance by issue of Depository Receipts/FCCBs. Board should approve the proposal and decide on the date and timings of the general meeting for shareholder's approval.

APPROVAL OF SHAREHOLDERS

After the approval of the Board of Directors, a special resolution should be passed in the meeting of the shareholders.

IN PRINCIPLE APPROVAL OF MINISTRY OF FINANCE

In principle approval will be required only if the issue is through approval route. If it is through automatic route then no such approval is needed.

APPROVAL OF MINISTRY OF CORPORATE AFFAIRS

Approval of the Ministry of Corporate Affairs should also be obtained.

APPROVAL OF THE RBI

An issue covered under automatic route does not require RBI approval as RBI has given general permission for such transactions.

In principle consent of Stock exchanges for listing the underlying shares

In principle consent of financial institutions in case the term loans have been obtained by the company from financial institutions.

INTERMEDIARIES REQUIRED TO BE APPOINTED

The following intermediaries are generally required in case of Depository receipt:

LEAD MANAGER

The company has to choose a competent lead manager to structure the issue and arrange for the marketing. Lead managers usually charge a fees as a percent of the issue.

CO-LEAD /CO-MANAGER

In consultation with the lead manager, the company has to appoint co-lead/co-manager to coordinate with the issuing company/lead manager to take smooth launching of the issue.

OVERSEAS DEPOSITORY BANK

It is the bank, which is authorized by the issuing company to issue depository receipts against issue of ordinary shares or Foreign Currency Convertible Bonds of issuing company.

DOMESTIC CUSTODIAN BANK

This is a banking company which acts as custodian for the ordinary shares foreign currency convertible bonds of an Indian company, which are issued by it. The domestic custodian bank functions in co-ordination with the Depository Bank.

LISTING AGENT

One of the conditions in case of euro issue is that it should be listed at one or more overseas stock exchanges. The appointment of listing agent becomes necessary to coordinate with issuing company for listing the securities on the stock exchanges.

LEGAL ADVISORS

The issuing company should appoint legal advisors who will guide the company and the lead manager to prepare the offer document, depository agreement, indemnity agreement and subscription agreement.

PRINTERS

The issuing company should appoint printers of international repute for printing offer circulars.

AUDITORS

The role of the issuer company's auditor is to prepare audit report for inclusion in the offer document.

UNDERWRITERS

It is desirable to get the issue underwritten by banks and syndicates. In addition to their usual job, they will also interact with the influential investors and assist the lead manager to complete the issue successfully.

PRINCIPAL DOCUMENTATION INVOLVED

SUBSCRIPTION AGREEMENT

Subscription Agreement basically defines the terms and conditions between lead managers, other managers, intermediaries and the company. Subscription agreement contains the offer price, date of issue, underwriter's obligations, other intermediaries' terms and conditions etc.

DEPOSITORY AGREEMENT

Depository Agreement deals with the details arrangements, terms and conditions entered into by the company with the Depository. It also defines and confines the rights and duties of the depository in respect of the deposited shares and all other securities.

The company may agree in the depository agreement to indemnify the depository. Copies of the depository agreement are to be kept at the principal office of the depository and should be available for inspection.

CUSTODIAN AGREEMENT

Custodian works in co-ordination with the depository and has to observe all obligations imposed on it including those mentioned in the depository agreement. Custodian agreement deals with the terms, conditions, rights and duties of the custodian and the other important clauses governing the relation of the custodian with the company and the depository.

AGENCY AGREEMENT

In case of FCCB,, the company has to enter into an agency agreement with certain persons known as conversion agents. Under this agreement, agents are required to make the principal and interest payment to the holders of the FCCB from the funds provided by the company.

TRUST DEED

In respect of FCCB's, the company enters into a Trust Deed with the trustee for the holders of FCCB. This trust deed guarantees the payment of principal and interest amount on such FCCB and also ensures compliance with the other obligations.

ISSUE OF FOREIGN CURRENCY CONVERTIBLE BONDS (FCCB'S)

- The FCCB's to be issued will have to conform to the Foreign Direct Investment Policy
- The issue of FCCB's shall be subject to a ceiling of US $500 million in any financial year
- Public issue of FCCBs shall be only through reputed lead managers in the international market
- The maturity of FCCB's shall not be less than 5 years.
- The FCCB proceeds shall not be used for any purpose which is prohibited vi)Banks/FIIs shall not provide guarantee/letter of comfort etc for the FCCB issue
- The issue related expenses shall not exceed 4% of the issue size and in case of private placement, shall not exceed 2% of the issue size.
- The issuing entity shall, within 30 days from the date of completion of issue, furnish a report to 'the concerned Regional Office of the RBI.
-

INDIAN DEPOSITORY RECEIPTS

Under Section 2(48) of the Companies Act, 2013, 'Indian Depository Receipt' means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporate outside India making an issue of such depository receipts. An issuing company cannot raise funds in India by issuing IDR's unless it has obtained prior permission from SEBI.

Section 390 read with Companies (Registration of Foreign Companies) Rules, 2014 provides that no company incorporated outside India shall make an issue of IDR unless such companies complies with conditions mentioned in rule in addition to the SEBI rules and RBI directives.

RULE 13 OF THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014 -INDIAN DEPOSITORY RECEIPTS

The following are the important points in this regard:

ELIGIBILITY

The issuer company shall not issue IDR's unless:

- Its pre-issue paid up capital and free reserves are at least US $50 Million and it has a minimum average market capitalization (during the last 3 years) in its parent country of at least US $100 million
- It has been continuously trading on a stock exchange in its parent country for at least 3 immediately preceding years.

- It has a track record of distributable profits for at least 3 out of the immediately preceding 5 years.
- It fulfils such other eligibility criteria as may be laid down by the SEBI

PROCEDURE

- The issuing company shall obtain necessary approvals of the appropriate authorities in the country of its incorporation
- Application for prior approval of SEBI shall be made at least 90 days prior to the opening of the issue
- A due diligence report (through merchant banker) shall also be submitted to SEBI along with the application.
- SEBI 'may call for additional information with 30 days and will dispose of the application within 30 days after the receipt of additional information.
- Final prospectus must be filed with SEBI as well as ROC.
- In principle approval must be obtained from one or more stock exchanges having nationwide trading terminals.
- The issuing company shall appoint an overseas custodian bank, a domestic depository and a merchant banker for the purpose of issue of IDRs

A holder of IDR's may nominate a person any time by filing Form FC-5 for this purpose.

The number of underlying shares offered in a financial year through IDR offerings shall not exceeds 25% of the post issue number of equity shares of the company.

IMPORTANT PROVISIONS IN CONNECTION WITH LISTING AGREEMENT FOR IDR: (AS PER SEBI (ICDR) REGULATIONS)

ELIGIBILITY

- The issuing company is listed in its home country,
- The issuing company has a track record of compliance with securities market regulations in its home country
- The issuing company is not prohibited to issue securities by any regulatory body.

CONDITIONS FOR ISSUE OF IDR

- Issue size shall not be less than 50 crore
- Minimum application amount shall be 20,000
- At least 50% of the IDR shall be allotted to QIB's and the remaining may be allotted to non-institutional investors and retail investors.

- At any given point of time, there shall be only one denomination of IDR of the issuing company.

OTHER CONDITIONS

- The Merchant Banker shall submit post issue reports to the Board as follows:
  - ✓ Initial post issue report within 3 days of closure of the issue
  - ✓ Final post issue report, within 15 days of the date of finalization of basis allotment or within 15 days of refund of money in case of failure of the issue.

RIGHTS ISSUE OF IDR - SALIENT FEATURES

ELIGIBILITY

1. No issuer shall make a rights issue of IDR's if at the time of undertaking the rights issue, the issuer is in breach of any obligation under the IDR listing agreement or material obligation under the deposit agreement entered with depository.
2. It has made an application to the stock exchange to list the IDR issues and chosen one as designated stock exchanges.

RECORD DATE

A listed issuer making a rights issue shall announce a record date for the purpose of determining the shareholders eligible

OTHER CONDITIONS

1. The offer document for the rights offering shall contain disclosures as required.
2. The issuer company shall, through the lead merchant banker, file the draft offer document with SEBI.
3. If SEBI specifies any change in the draft offer document, the issuer and the merchant banker shall file a revised draft offer document
4. The issuer shall ensure that the compliance officer, in charge of ensuring compliance with the obligations, functions from within the territorial limits of India.
5. The issuer shall send a copy of the Annual Report containing financial statements to the IDR holders within 4 months from the end of the financial year.
6. A company secretary shall be appointed as Compliance Officer to liaise with the various authorities.

LISTING AGREEMENT REQUIREMENT FOR ISSUING COMPANY

- Stock exchange was notified about the summary of the Board meeting within 15 minutes from the end of the Board Meeting.
- Copy of all the material documents is forwarded to stock exchange from time to time.

- Shareholding pattern on quarterly basis must be filed within 21 days from the end of the quarter.
- Corporate Governance requirements relating to Board composition, committees,
- Independent directors and such other formalities must be complied with.
- Quarterly Report on Corporate Governance must be filed within 15 days from the end of the quarter.

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DUE DELIGENCE OF MERGER AND ACQUISITION

INTRODUCTION

A company may decide to accelerate its growth by developing into new business areas, which may or may not be connected with its traditional business areas, or by exploiting some competitive advantage that it may have. Once a company has decided to enter into a new business area, it has to explore various alternatives to achieve its aims.

Basically, there can be three alternatives available to it:

i. The formation of a new company;
ii. The acquisition of an existing company;
iii. Merger with an existing company.

The decision as to which of these three options are to be accepted, will depend on the company's assessment of various factors including in particular:

i. The cost that it is prepared to incur;
ii. The likelihood of success that is expected;
iii. The degree of managerial control that it requires to retain.

For a firm desiring immediate growth and quick returns, mergers can offer an attractive opportunity as they obviate the need to start from 'scratch' and reduce the cost of entry into an existing business. However, this will need to be weighed against the fact that unless the shareholders of the transferor company (merging company) are paid the consideration in cash, part of the ownership of the existing business remains with the former owners.

Merger with an existing company will, generally, have the same features as an acquisition of an existing company. However, identifying the right candidate for a merger or acquisition is an art, which requires sufficient care and caliber.

Once an organization has identified the various strategic possibilities, it has to make a selection amongst them. There are several factors financial/non financial/ open/hidden factors that influence the ultimate choice of strategy. The process of analysis of strategic choices on various aspects for merger is done through due diligence process.

STAGES	FOR BUYER	FOR SELLER
Preparation Stage	✓ M&A Strategy formulation ✓ Preparation of List of potential targets ✓ Appoint external advisor for evaluation of targets ✓ Short list targets ✓ Create Due diligence team	✓ Structure a Business plan ✓ Preparation of list of potential buyers ✓ Appoint external advisor ✓ Shortlist buyers
Pre diligence	Approach targets Negotiation of initial terms Execute Non Disclosure Agreement Compilation of list of data required	✓ Approach buyers Negotiate initial terms Execution of Non-Disclosure agreement Creation of Data room
Due diligence	Inspection of Data room Analysis of private documents Evaluation of risk and return Structure the terms and conditions	Assistance in data room Setting deadlines for offer
Negotiations	Make final offer Negotiate and agree on terms	Compile final offers select best offer negotiations
Post diligence	Post merger integration and cultural adjustments	Termination of data room and ownership exchange

Due Diligence Process in the M&A Strategy

ACTIVITY SCHEDULE FOR PLANNING A MERGER

As there are two steps of process of M&A, filing of 1st motion application (Take permission/ instruction for holding of Meetings) with NCLT and filing of 2nd motion petition (Scheme of M&A) with NCLT. Each step includes number of activities and processes as defined as under:

Sr. No.	Activity
1	Objects clause to be examined
2	Preparation of Draft Scheme of Amalgamation
3	Board meeting of the transferor and transferee companies to be held.
4	Stock Exchange
5	Press Release
6	Financial Institutions/ Banks/Trustees to Debenture holders, if any, to be formally advised their consent sought.
7	**Application to the Tribunal** If there are any calls in arrears of transferor company, the Tribunal

	direction to be sought specifically. In case of a merger of a potentially sick company with a healthy company, the possibility of reducing the share capital of the sick company to the extent of losses to be considered and procedure for reduction to be undertaken. This would have an effect on the EPS of the merged company.
8	Notices of Extra Ordinary General Meeting.
9	Notice to statutory authority
10	Meetings of Members
11	Petition to Tribunal
12	Directions on the Petition by tribunal
13	Publication of notice of the hearing
14	Hearing and Order.
15	Filing/Annexing
16	FEMA
17	Effective Date
18	Compliance until completion of scheme

INFORMATION REQUIRED TO BE CIRCULATED ALONG WITH THE NOTICE

1. Details of the order of the Tribunal directing the calling, convening and conducting of the meeting
2. Details of company
3. Relationship in case of Combined Application: if the scheme of compromise or arrangement relates to more than one company, then the fact and details of any relationship subsisting between such companies who are parties to such scheme of compromise or arrangement, including holding, subsidiary or of associate companies.
4. Disclosure about effect of M&A on material interests of directors, Key Managerial Personnel (KMP) and debenture trustee.
5. Details of Board Meeting
6. Explanatory Statement disclosing details of the scheme of compromise or arrangement
7. Disclosure about the effect of the Merger & Amalgamation (C&A)
8. A report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;
9. Details of availability of documents: Details of the availability of the following documents for obtaining extract from or for making or obtaining copies of or for inspection by the members and creditors
10. Some Other documents: Where an order has been made by the Tribunal under

Section 232(1), merging companies or the companies in respect of which a division is proposed

Preparation of scheme of Amalgamation

The scheme of amalgamation to be prepared by the company should contain *inter-alia* the following information:

1. Definitions of transferor and transferee as well as the definition of the undertaking of the transferor company.
2. Authorized, issued and subscribed capital of transferor and transferee companies.
3. Basis of scheme should be explained briefly on the recommendation of valuation report, covering transfer of assets/liabilities, specified date, reduction or consolidation of capital, application to
4. Financial institutions as lead institution for permission, etc.
5. Change of name, object and accounting year.
6. Protection of employment.
7. Dividend position and prospects.
8. Management structure, indicating the number of directors of the transferee company and the transferor company.
9. Applications under Sections 230 & 230 of the Companies Act, 2013 to obtain approval from the Tribunal.
10. Expenses of amalgamation.
11. Conditions of the scheme to become effective and operative and the effective date of amalgamation.

The basis of the scheme should be framed on the reports of valuers, auditors and chartered accountants of assets of both the merger partner companies. The underlying idea is to ensure that the scheme is just and equitable to the shareholders and employees of each of the amalgamating companies and to the public at large. It should be ensured that common yardstick is adopted for valuation of shares of each of the amalgamating company for fixing rate of exchange of shares on merger.

Data room management in strategic decisions:

Security is a critical issue in managing the data room as sensitive information should not be leaked to the people nor covered by non-disclosure agreement. Such information leaks can have detrimental effects on the entire transaction process and may adversely affect the consideration being paid by a buyer.

Data must be compiled, indexed and properly organized and this process takes up valuable resources. Functions wise contact persons are assigned to manage the data room information from their areas. Under virtual data room, copying or printing of documents

may be delayed.

HR and cultural due diligence in business transactions: culture is a complex system with a multitude of interrelated processes and mechanisms based on which the organization functions. It includes the vision/mission of the organization, workflow process, communication mechanism, formal procedures and so on. The issue of cultural integration and issue of human behavior need to be addressed either before or simultaneously with the issues of financial and legal integration. If cultural issues are ignored, the success may only be transient.

According to KMPG study, 83% of all the mergers and acquisitions failed to produce any benefit for the shareholders and over 50% actually resulted in destruction of value. It revealed that the over whelming cause for failure is the people and the cultural differences.

Culture of an organization means the sum total of things the people do and the things the people do not do. Behavioral patterns prevailing in the organization create mental blocks for the people in the organization. Employees and stakeholders need to be acquainted with different cultures and they need to be mentally prepared to adopt the good points of other cultures and shed the blockades of their own cultures. Such an open approach will make the fusion of cultures and ethos easy and effective.

The following checks have to be made continuously to ensure that:

- Sensitive areas of the company are pinpointed and the personnel's in these sections are carefully monitored.
- Serious efforts are made to retain key people.
- Replacement policy is ready to cope with inevitable personal loss
- Records are kept of everyone who leaves, when, why, and to where
- Employees are informed of what is going on in the organization
- Likely union reactions are assessed in advance
- New policies are clearly communicated to all the employees
- Family gatherings and picnics be organized for the employees.

Importance of corporate cultures:

Corporate culture influences the performance of an organization, since it determines:

✓ Style of tackling problems
✓ Method or style of communication
✓ Adaptability of employees
✓ Organization commitment to strategies and ultimately vision and mission

A perfect integration would include a new culture and this new culture should include the best elements from both the organization.

Types of cultural differences: these are three types of cultural differences:

1. Cross national differences
2. Cross organizational differences
3. Cross functional differences

CULTURAL DUE DILIGENCE:

CDD is the process of identifying, assessing, investigating, evaluating and defining the cultures of two or more distinct corporates through a cultural analysis so that the similarities and the differences that impact the merged organization are identified and remedial actions are taken well in advance. It should be carried along with M&A due diligence stage itself. The findings of the cultural due diligence would be the base for post integration strategies.

Scope of CDD:

- Leadership, strategies and governing principles
- Relationship and behaviors
- Communication
- Infrastructure
- Involvement and decision making
- Change management
- Communication platforms
- Finance

Cultural aspects to be analyzed:

⊕ Leadership vision
⊕ Management practices
⊕ Governing policies
⊕ Policies and procedures
⊕ Informal practices
⊕ Relationship management
⊕ Employee satisfaction
⊕ Customer satisfaction
⊕ Key business drivers
⊕ Organizational characteristics
⊕ Organizational perceptions
⊕ Communication mechanism etc.

How to address cultural differences during merger:

- Formation of strategies for cultural integration
- Analyzing the existing cultures
- Identifying common aspects and differences
- Establish bridges between both the companies

- Prefer either culture or opt for integrated culture
- Establish basis and mechanism for both the cultures
- Extensive interaction with people.

Mechanisms that may help in resolving cultural differences:

✓ Newsletters and hotlines
✓ Workshops
✓ Surveys, questionnaires and feedback analysis
✓ Synergy teams
✓ Continuous interactions.

Corporate governance due diligence:

The corporate governance framework depends on the legal, regulatory and institutional environment, business ethics and awareness of the environmental and societal interests of the constituencies in which it operates.

The degree to which the corporations observer basic principles of good corporate governance is an increasingly important factor for taking key investment decisions.

Quality of governance depends on the following factors:

i. Integrity of the management
ii. Ability of the board
iii. Adequacy of the processes
iv. Commitment level of individual board members
v. Quality of corporate reporting
vi. Participation of stakeholders in the management

The following are some of the important aspects are to be analyzed during corporate governance due diligence:

1. **Board compliance:**
   - **a.** Composition of independent directors depending on whether the chairman is executive or non-executive
   - **b.** Written policy, procedures

2. **Board system and procedures:**
   - **a.** Details of board meeting, procedures
   - **b.** Meeting through video conferencing
   - **c.** Written code of conduct
   - **d.** Communication of board decisions

3. **Board committees:**
   - **a.** Name of the board committees, composition
   - **b.** Details of the chairperson of board committees
   - **c.** Communication mechanism
   - **d.** Details of pending grievances

4. Transparency and disclosure compliances:

- **a.** Details of disclosures in various reports
- **b.** Means of communication
- **c.** Details of filings
- **d.** Compliance of various laws
- **e.** Details of secretarial audit
- **f.** Details of corporate disclosure policy

5. Shareholder value enhancement

6. Corporate social responsibility

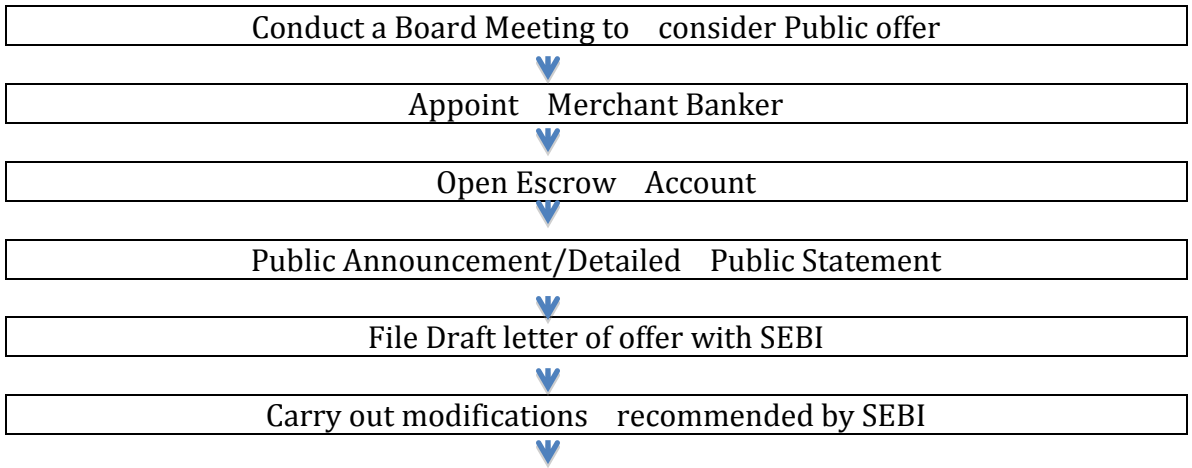
Advantages of having good corporate governance:

- Adoption of good governance practices provides stability and growth to the enterprise
- Good governance system builds confidence amongst stakeholders
- Investors pay higher price for the corporates demonstrating good corporate governance
- Effective governance reduces perceived risks
- Adoption of corporate governance provides long term sustainability
- A good corporate citizen becomes an icon and enjoys respect.

Takeover Due Diligence

The compliances relating to takeovers include disclosure requirements, take-over process etc.

Takeover process in India (when there is no competitive bid)



Dispatch letter of offer to shareholders

↓

Tendering Period

↓

Payment of consideration

Meaning of important terms:

Takeover Bid:

It is an offer addressed to each shareholder of a company to buy his shares in the Company at the offered price within the stipulated 'period of time. It may be made conditional upon a specified percentage of shares being the subject matter of acceptance by or before a stipulated date.

Partial Bid:

This is a bid where the acquirer intends to acquire part of the share capital' but want to obtain effective control of the offeree through voting power. Thus, such bid intends to acquire control over the target company irrespective of whether or not there has been any acquisition of shares of voting rights in a company.

Competitive Bid:

After the Acquirer makes an offer to acquire shares in the target company, if any other person finds interest in acquiring such shares then he can make a better offer in the form of competitive bid. In case of competitive bid, the acquirer who had made the original offer can revise the bid.

Checklist on Takeovers

Preliminary examination of the Target Company:

The acquirer has to undertake a preliminary study on the target company, before taking any action for taking over a company.

Some of the important aspects to be checked are as follows:

- Financial & legal aspects
- Register of members
- Title of the target company over immovable properties may be verified
- Financial statement of the target company has to be examined
- Examination of Articles and Memorandum of Association
- Examination of the charges created by the company
- Application of FEMA provisions, if any.
- Import 'and export obligations
- Business prospects etc.

Escrow Account (Regulation 17)

Escrow account means a bank account, which is required to be opened by an acquirer who proposes to make public announcement of offer. The following provisions are important in this regard:

Timing of Opening of Escrow Account:

The acquirer shall open an escrow account at least two working days prior to the date of detailed public statement.

Amount to be deposited in Escrow Account:

Sr.no.	Consideration payable under the open offer	Escrow amount
1.	On the 1st Rs. 500 Crore	25% of the consideration
2.	On the balance consideration	An additional amount equal to 10%

In case of conditional offer → Then higher of the following **two** shall be deposited in escrow account:

- 100% of consideration payable in respect of minimum level of acceptance **OR**
- 50% of the consideration payable under open offer

Important Points to remember in case of Escrow Account:

In the event of upward revision of the offer price or of the offer size, the additional amount shall be brought into the escrow account prior to effecting such revision.

Mode of deposit in escrow account:

- Cash Deposit,
- Bank Guarantee or
- Deposit of frequently traded and transferable equity shares.

In case of

- Bank guarantee **OR**
- By deposit of securities,

The acquirer shall also ensure that **at least 1% of the total consideration payable** is deposited in cash with a scheduled bank as a part of the escrow account.

If the mode of deposit in escrow account is by way of bank guarantee, such bank guarantee shall be in favour of the manager to the open offer.

If securities are deposited in escrow account, then the acquirer shall authorize the manager to realize the value by sale or otherwise and the manager shall be liable to make good the shortfall, if any.

Release of amount from the Escrow Account:

- In case of withdrawal of offer, the managers to the open offer can release the entire amount only after certification.
- The amount up-to 90% deposited in the escrow account is transferred to the special bank account opened with the bankers to the issue.
- The balance 10% is released to the acquirer on the expiry of 30 days from the completion of all obligations under the offer.

In the event of forfeiture of amount, the entire amount is distributed in the following manner:

- 1/3rd of the amount to the Target company
- 1/3rd of the amount to the Investor Education and Protection Fund
- 1/3rd to be distributed to the shareholders who have tendered their shares in the offer.

Undertaking/ Authorization:

Ensure to obtain following undertaking/authorization:

- A letter duly authorizing Target Company to realize the value of escrow account in terms of takeover code
- An undertaking to the target company that none of the acquirer/PAC have been prohibited by 'SEBI from dealing in securities
- An undertaking from the sellers, promoters, directors of the target company that they have not been prohibited by SEBI from dealing in securities.
- An undertaking from the target company that it has complied with the provisions of the listing agreement.

Public Announcement & Detailed Public Statement:

The takeover regulations have prescribed separate timelines for Public Announcement as well as for detailed public statement.

Public Announcement:

The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed. Further, a copy of the it shall also be sent to the SEBI and to the target company at its registered office within 1 working day of the date of the public announcement.

Timing of Detailed Public Statement:

In terms of Regulation 13(4) of SEBI (SAST) Regulations, a detailed public statement shall be published by the acquirer through the Manager to the Open Offer within 5 working days from the date of Public Announcement.

In case of Indirect acquisition, the detailed public statement shall be published not later than 5 working days of the completion of the primary acquisition of shares or voting rights or control over the company.

Contents of Public Announcement/Public Statement: Regulation 15:

The public announcement shall contain such information as may be specified, including the following:

- Name and identity of the acquirer and persons acting in concert with him
- Name and identity of the sellers, if any.
- Nature of the proposed acquisition
- The consideration for the proposed acquisition that attracted the obligation to make an open offer
- Offer price, offer size and mode of payment.

The detailed public statement pursuant to the public announcement shall contain such information as may be specified in order to enable shareholders to make informed decision with reference to the open offer.

The public announcement of the open offer, the detailed public statement and any other statement, advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares shall not omit any relevant information or contain any misleading information.

Offer Price:

Offer price is the price at which the acquirer announces to acquire shares from the public shareholders under the open offer. The offer price shall not be less than the price calculated under Regulation 8 of the SEBI (SAST) Regulations depending on whether the shares are frequently or infrequently traded.

If Target Company's shares are frequently traded then the open offer price for acquisition of shares shall be highest of the following:

- Highest negotiated price per share under the Share Purchase Agreement (SPA) triggering the offer
- Volume Weighted average price of shares acquired by the acquirer during 52 weeks preceding the Public Announcement.
- Highest Price paid f or any acquisition by the acquirer during 26 weeks immediately preceding the PA Volume weighted average market price for 60 trading days preceding PA.

If Target Company's shares are infrequently traded then the open offer price for acquisition of shares shall be highest of the following:

- Highest negotiated price per share under the Share Purchase Agreement (SPA) triggering the offer Volume Weighted average price of shares acquired by the acquirer during 52 weeks preceding the Public Announcement.
- Highest Price paid for any acquisition by the acquirer during 26 weeks immediately preceding the PA

- The price determined by the acquirer and the manager to the open offer taking into account valuation parameters.

It may be noted that the Board may at the expense of the- acquirer, require valuation of shares by an independent merchant banker to the offer or any independent Chartered Accountant in practice having a minimum experience of 10 years.

Note: "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.

Filing of Draft Letter of Offer: (Regulation 16):
Within 5 working days of publication of DPS, the acquirer is required to file a draft letter of offer with SEBI for its observation. The SEBI shall give its comments as early as possible within 15 working days of the receipt of the draft letter of offer.

In case if the SEBI has sought some clarifications or additional information from the manager, the period for issuance of comments shall be extended to the 5th working day from the date of receipt of satisfactory reply.

Dispatch of letter of offer to shareholders (Regulation 18(2):
The letter of offer shall be dispatched not later than 7 days from the receipt of the comments from SEBI, to the shareholders whose names appear on the register of members of the target company as on the identified date.

Advertisement before tendering period (Regulation 18(8)):
The acquirer shall- issue an advertisement 1 working day before the commencement of the tendering period, announcing the schedule of activities to the open offer, the status of statutory and other approvals, the procedure for tendering acceptances and such other material details as may be specified.

Such advertisement shall be made in all newspapers in which the detailed- public statement pursuant to the public announcement are made and should be simultaneously sent to the stock exchanges and the one copy should be sent to the target company at its registered office.

Tender Period:
The tendering period must start not later than 12 working days from the date of receipt of comments from the Board and shall remain open for 10 working days.

Thus the term 'Tender Period' refers to the 10 working days during the offer period, during which the eligible shareholders who wish to accept the open offer can tender their shares.

Shareholders who have tendered shares in acceptance of the open offer shall not be entitled to withdraw such acceptance during the tendering period.

The acquirer shall' within 10 working days from the last date of the tendering period, complete all requirements under these regulations and other applicable law relating to the open offer including payment of considerations to the shareholders who have accepted the open offer.

The acquirer shall be responsible to pursue all statutory approvals in order to complete the open offer without any default, neglect or delay.

Post offer Advertisement:
The acquirer shall issue a post offer advertisement in such form as may be specified within 5 working' days after the offer period giving details including aggregate number of shares tendered, accepted, date of payment of consideration etc.

Such advertisement shall be made in all newspapers in which the detailed public statement pursuant to the public announcement are made and should be simultaneously sent to the stock exchanges and the one copy should be sent to the target company at its registered office.

Consequences of Violation of Obligations under SEBI (SAST) Regulations, 2011:
In case of failure to carry out any of the obligations or other provisions of the takeover code, penalties have been prescribed.

These penalties include:
- Directing the divestment of shares acquired or transfer of shares to IEPF
- Directing the target company not to give effect to any transfer of shares
- Directing the acquirer not to exercise any voting or other rights
- Debarring the persons from accessing the capital market or dealing in securities

- Directing the acquirer to make an open offer at an offer price determined by SEBI
- Directing the acquirer to pay interest for delayed payment of the open offer consideration
- Directing any person to cease and desist from exercising control acquired over any target company

Directors of the Target Company (Regulation 24):
During the offer period, no person representing the acquirer or any person acting in concert with him shall be appointed as director on the Board of Directors of the Target Company, whether as an additional director or otherwise.

However, after an initial period of 15 days from DPS, appointment on the Board of target Company of a person representing acquirer may be done if acquirer deposits (in cash) in escrow account 100% of the consideration payable under open offer.

If an open offer is made conditional upon minimum level of acceptances, the acquirer, regardless of the cash deposited in escrow, not be entitled to appoint any director representing the acquirer or person acting in concert with him on the Board of Target Company.

During the pendency of competing offer, there shall be no induction of any new directors on the board of Target Company. However, in the event of death o incapacity, the vacancy may be filled by any person subject to its approval b shareholders by postal ballot.

General obligations of acquirer to the open offer (Regulation 25):
Prior to making a firm announcement of an open offer for acquiring shares under these regulations, the acquirer shall ensure that the firm financial arrangement have been made for fulfilling the payment obligations under the open offer and that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.

In the event the acquirer has not declared an intention in the DPS and the LOO to alienate any asset of the target company or any of its, subsidiaries whether by way, of lease, sale, encumbrance or otherwise outside the ordinary course of business, the acquirer shall be debarred from causing such alienation for a period of 2 years after the offer period.

However, if the target company wants to alienate any asset on its own even when the acquirer did not declare such intentions, then it will need special resolution approvals from the members of the target company by way of a postal ballot and the notice of the postal ballot shall explain the reasons for such and necessity of such alienation.

The acquirer shall ensure that the contents of the public announcement, the detailed public statement, the letter of offer and the post offer advertisement are true, fair and adequate in all material aspects and not misleading in any material particular and based on reliable sources and state the source where necessary.

The acquirer and persons, acting in concert with him shall not sell shares of the target company held by them during the offer period.

The acquirer and the person acting in concert with him shall be jointly and severally responsible for fulfillment of applicable obligations under- this regulation.

General Obligations of Target Company (Regulation 26):

Obligations of the target company are as follows:
During the offer period post public announcement, the Board of Directors of the target company shall ensure that the business of the target company is conducted in the ordinary course consistent with past practice.

During the offer period, unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not: -

- Alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement thereof outside the ordinary course of business.
- Effect any material borrowings outside the ordinary course of business
- Issue any securities entitling the holder to voting rights, however, the following may be done:
- Issue shares under conversion obligations for securities issued prior to public announcement
- Issue shares pursuant to public issue if RHP has been filed prior to public announcement
- Issue or allot shares pursuant to any rights issue in respect of which the record date has been announced prior to public announcement of the open offer.
- Implement any buy back or effect any change in the capital structure.
- Enter into, amend or terminate any material contract to which the target company or any of its subsidiaries may have an obligation.

The target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.

The target company shall furnish to the acquirer within 2 working days from the identified date, a list of shareholders and other details of the target company

Upon receipt of the detailed public statement, Board of the target company shall constitute a committee of independent directors to provide recommendations on such open offer.

The committee of Independent Directors shall provide its written reasoned recommendations on the open offer to the shareholders of the target company and such recommendations shall be published in such form as may be at least 2 working days before the commencement of tendering period.

The Board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer.

The Board of the target company shall register the transfer of shares acquired by the acquirer.

General Obligations of the Manager to the Open Offer (Regulation 27):

Prior to public announcement being made, the manager to the open offer shall ensure that the acquirer is able to implement the open offer and the arrangement of the funds has already been made.

To ensure that the detailed public statement, letter of offer, post offer advertisement are true, fair and adequate in all material aspects.

The manager to the open offer shall furnish to the Board a due diligence certificate along with a draft letter of offer

The manager to the open offer shall ensure that the market intermediaries engaged for the purposes of open offer are registered with the Board

The manager to the open offer shall exercise due diligence, care and professional judgment and shall not deal on his own account in the shares of the target company during the offer period.

The manager to the open offer shall file a report with the Board within 15 working days from the expiry of the tendering period confirming status of various open offer requirements.

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COMPETITION LAW DUE DILIGENCE

Due diligence of competition law involves examination of the current/proposed operations and practices of an enterprise to determine the extent of its compliance with the competition law.

This process includes examination of business/trade agreements, analysis of proposed mergers/combinations, check the abuse of dominance of an organisation.

Objects of competition act:
The competition act seeks to ensure fair competition by providing for:

- ✧ Prohibition of anti-competitive agreement
- ✧ Prohibition of abuse of dominant position
- ✧ Regulation of combination, acquisitions, mergers etc.
- ✧ Competition advocacy

The basic purpose of competition law is to ensure that the market remains competitive to the benefit of both the business and the consumers.

Why comply with competition act:
Genuine business competitiveness is demonstrated through fierce competition in individual markets and only competitiveness that survives market competition can sustain itself in the long term.

The main aim of the competition law is to ensure that markets remain competitive. Broadly speaking, complying with competitive law ensures that this aim is achieved to the benefit of both business and consumers. Similarly, at individual level, businesses that comply with law could avoid the various consequences of non-compliance.

In an era of global competition, voluntary compliance with competition law is becoming a global standard led by the world's most prominent international corporations and thus it becomes essential that all companies strive for voluntary observance of fair market discipline.

IMPORTANT CONCEPT:
ENTERPRISE:
Enterprise means a person or a department of the government who or which is or has been engaged in any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods or in the business of

acquiring, holding, underwriting with shares or such securities but does not include any activity of the government relatable to the sovereign functions of the government including dealing with atomic energy, currency, defence and space.

ANTI-COMPETITIVE AGREEMENT: SECTION 3:

These are agreements between enterprise or association of enterprise in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services which cause or is likely to cause an appreciable adverse effect on competition within India.

How to determine appreciable adverse effect:

The competition commission of India will have due regard to the following to determine whether an agreement has an appreciable adverse effect on competition:

- Creation of barriers to new entrants in the market
- Driving existing competitors out of the market
- Foreclosure of competition by hindering entry into the market

IMPORTANT PROVISIONS OF COMPETITION ACT

TYPES OF ANTI-COMPETITION AGREEMENT:

HORIZONTAL AGREEMENT (SECTION3(3)):

Price fixing: It occurs when two or more firms agree to raise or fix prices in order to increase their profits by reducing competition.

Limiting the production or supply: The object of these agreements or arrangements is to eliminate competition by limiting the quantity.

Allocation of market share: It means agreement among enterprises that will have exclusive or preferential rights in a designated area.

Bid rigging: An agreement which has the effect of eliminating or reducing the competition for bids or the any kind or manipulating for bids. Bid rigging is the particular form of collusive price fixing behaviour by which firms coordinate their bids.

VERTICAL AGREEMENTS:

These are agreements between enterprises at different stages of production chain.

These agreements are not considered anti-competitive per se.

Tie in arrangement: It is an agreement by which a purchaser of goods is required, as a condition of such purchase, to purchase some other goods.

Exclusive supply agreement: It means an arrangement or practice whereby a manufacturer or supplier requires his dealers to deal exclusively in his products and not in the product of his competitors.

Exclusive distribution agreement: It includes agreement between enterprises that they will have exclusive or preferential rights in a designated area.

Refusal to deal: It's a practice of restricting persons or class of persons to whom the goods are sold or from whom the goods are brought.

Resale price maintenance: It is a situation in which the suppliers forces the distributors/retailer seller to sell the goods to the customer at a price stipulated by the supplier.

DOMINANCE [SECTION 4]

MEANING:

Explanation to section 4(2) of the competition act, 2002 defines dominant position in terms of position of strength enjoyed by an enterprise, in the relevant market in India, which enables it to:

- Operate independently of the competitive forces prevailing in the relevant market or
- Affect its competitors or consumer or the relevant market in its favour.

Dominance as such is not bad under the competition act but its abuse is prohibited under the act. The act gives an exhaustive list of practices that constitutes abuse of dominant position and therefore is prohibited. Such practices shall constitute abuse only when adopted by an enterprise enjoying dominant position in the relevant market in India.

RELEVANT MARKET:
It means a market which may be determined by the commission with reference to the relevant product market or the relevant geographical market or with reference to both the markets.

RELEVANT GEOGRAPHICAL MARKET: It means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring area.

RELEVANT PRODUCT MARKET: It means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.

Examples of abuse:

- Limiting or restricting production of goods or provision of services
- Denying market access in any manner
- Using dominant position in one market to enter other relevant market.
- Directly or indirectly imposing unfair or discriminatory condition

When dominance gets abused:
Abuse of dominance is judged in terms of the specified types of acts committed by a dominant enterprise alone or in concert. Such acts are prohibited under the law.

PROVISIONS RELATING TO COMBINATION

Combination (Sec 5)
It means acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has control over another enterprise engaged in competing business and it also includes

Entering into a combination which causes or likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such combination would be void.

Mergers and amalgamations between or amongst the enterprises when the combining parties exceed the threshold limits as given in Section 5.

	Applicable to	Assets	Turnover
In INDIA	Individual party	Rs2,000 crores	Rs6,000 Crores
	group	Rs8,000 Crores	Rs24,000 Crores

In India and outside India	Applicable to	Assets		Turnover	
		Total	Minimum Indian Component	Total	Minimum Indian component
	Individual party	US$1billions	Rs1000 cr	US$3 B	Rs3000crores
	Group	US$4billions	Rs1000 cr	US$12 B	Rs3000crores

*the above threshold limits were increased by way of notification on 04th March, 2016.

NOTE:

- The turnover shall be determined by determined by taking into account the value of the goods and services
- The value of the assets shall be determined by taking the book value of the assets as shown in the audited books of account of the enterprise in the financial year immediately preceding the financial year in which the date of the proposed combination falls.
- The value of the assets shall include the brand value, value of goodwill or intellectual property rights.

REGULATION OF COMBINATION (Section 6) :

No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and if such a combination is formed, it shall be void.

It may be noted that under the law,

- Combinations are **REGULATED,** whereas
- Anti-competitive agreement and abuse of dominance are **PROHIBITED**.

NOTICE TO THE COMMISSION DISCLOSING DETAILS OF THE PROPOSED COMBINATION: SECTION 6(2):

Any person who proposes to enter into any combination or if any proposed combination exceeds threshold limit of asset/turnover as given under Section 5, then in such a case, the person or enterprise shall give a notice to the commission disclosing the details of the proposed combination in the prescribed form together with fees as may be prescribed by regulations.

Such intimation should be submitted within 30 days of

- ✓ Approval of proposal relating to merger/amalgamation or
- ✓ Execution of any agreement or
- ✓ Execution of any other document for acquisition of control.

However, if the CCI does not, on expiry of 210 days from the date of filing the notice u/s 6(2), pass an order or issue any directions, the combination shall be deemed to have been approved by the commission.

Penalty in case of non-disclosure of the proposed combination (Sec 43A)
If any person or enterprise who fails to give notice to the commission u/s 6(2), the commission shall impose on such person or enterprise a penalty which may extend to **1% of the total turnover or assets**, (whichever is higher).

Section 6(2A) states that no combination shall come into effect until a period of 210 days has passed from the day of notice or the commission has passed the orders whichever is earlier.

CATEGORIES OF TRANSACTIONS NOT LIKELY TO HAVE APPRECIABLE ADVERSE EFFECT ON COMPETITION IN INDIA/SITUATIONS IN WHICH NOTICE UNDER SECTION 6 NEED NOT BE FILED:

SR.NO.	EXEMPT TRANSACTIONS/NO NOTICE TO BE FILED WITH CCI IN THE FOLLOWING CASES
1	An acquisition of shares or voting rights solely as an investment or in the ordinary course of business in so far as the total shares or voting rights are held by the acquirer directly or indirectly, does not entitle the acquirer to hold **25% or more of the total shares or voting rights** of the company, of which shares or voting rights are being acquired directly or indirectly Provided that the acquirer is not a member of the BODs of the target company/nor has any right to nominate anyone on the board of target company/ nor has any intention to participate in the affairs of the target company. **Note:** acquisition of less than 10% of the total shares or voting rights of an enterprise shall be treated as '**solely as an investment**'.
2	An acquisition of stock in trade, raw material, stores and spares, trade

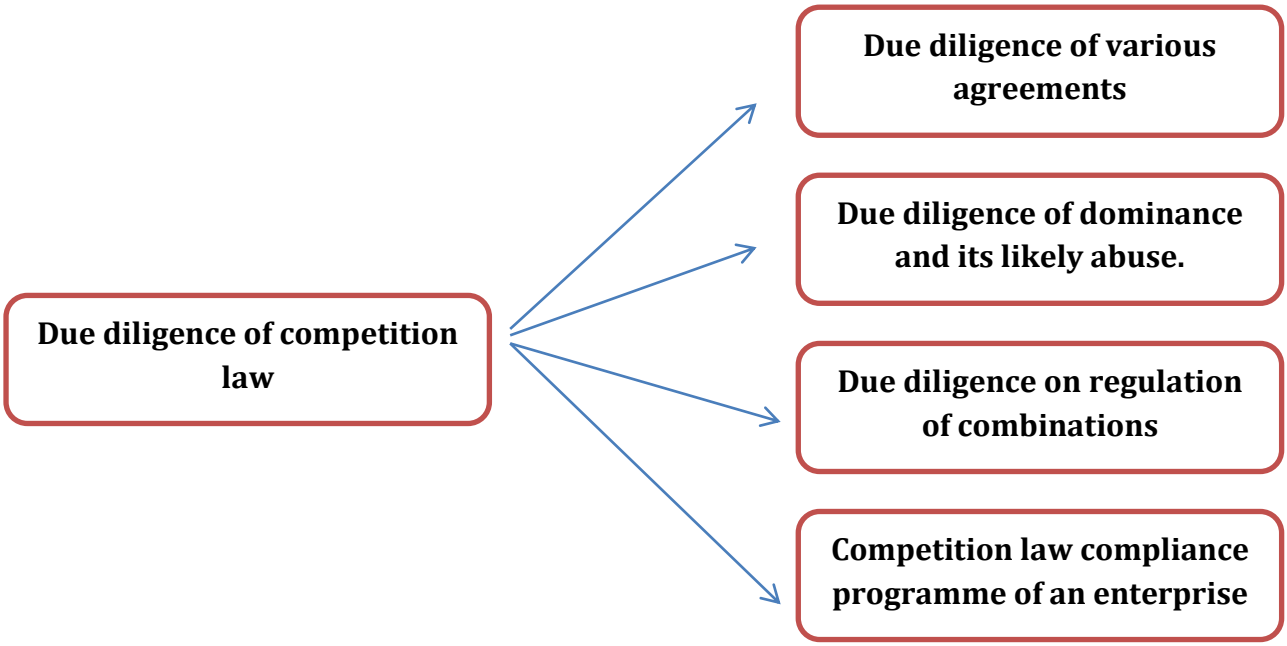
	receivables and other current assets in the ordinary course of business.
3	An acquisition of shares or voting rights pursuant to a bonus issue/stock split/consolidation/buy back/rights issue provided it does not lead to acquisition of control.
4	An acquisition of shares or voting rights by a person acting as underwriter/stock broker on behalf of its client in the ordinary course of business.
5	Share subscription or financing facility or any acquisition by a public financial institution, foreign institutional investors, bank or venture capital fund, pursuant to any convenant of a loan agreement or investment agreement. As per Section 6(5), the PFI, FII, bank or VCF are required to file in prescribed form details of the control, the circumstances for exercising such control and the consequences of default arising out of loan agreement or investment agreement, **within 7 days** from the date of such acquisition or entering into such agreement as the case may be.

DUE DILIGENCE OF COMPETITION LAW ASPECTS:

Due diligence on competition law aspects is an examination of the actual operations and practices of an enterprise to determine the extent of its compliance with the competition law and to identify potential risks and liabilities, and assess the adherence to and effectiveness of the company's competition law compliance policy and program.

Primary component of competition law due diligence are:

- An examination of selected company documents
- Interviews with selected company personnel
- Identify specific business activity that potentially could create any trust exposures for the company.
- The result of the due diligence may suggest an enterprise to have an effective competition law compliance programme.
- The result of the due diligence may result in variation of deal value, withdrawal of deal and also make suggestions to structure a compliance program.



Due diligence of various agreement	Due diligence on abuse of dominant position	Due diligence on regulation of combinations
▪ Agreement relating to production, supply and distribution of goods ▪ Agreement with competitors relating to production, bidding etc. ▪ Agreement with customers or distributors ▪ Purchase agreement ▪ Non-compete convenants ▪ Concession agreement ▪ Non-compete agreement	▪ Examination as to the existence of dominance ▪ Examination of relevant market, whether product or geographical ▪ Cause of abuse, if any	▪ Nature of combination ▪ Value of total assets or turnover ▪ Status of notification filed with CCI ▪ Status of dominance after merger.

Checklist for abuse of dominant position:

Competition law does not prohibit mere possession of dominance position, but only its abuse, thus recognising that a dominant position may have been achieved through superior economic performance.

Once its established that the enterprise has dominant position, then the next question to be determined is whether there has been any abuse of dominant position the abuses referred to under Section 4(2) of the competition Act, 2002 includes exploitative abuses such as unfair or discriminatory conditions or prices as well as exclusionary abuses such as denial of market access.

Do not:

- ✧ Discriminate between different customers
- ✧ Abruptly refuse to supply
- ✧ Abruptly refuse to provide services
- ✧ Discriminate prices or rebates between similar customers.
- ✧ Take more restrictive measures than are necessary to protect its business interests
- ✧ Give unjustified rebates, discounts or sale incentives
- ✧ Discriminate in regard to granting discount, rebate or allowance to a purchaser
- ✧ Do not discriminate between purchasers differently located
- ✧ Provide discretionary differential bonus or discount based on quantity.
- ✧ Provide discriminatory discounts based on qualities
- ✧ Impose discriminatory or unfair conditions to any category of users.

CHECKLIST FOR REGULATION OF COMBINATION

Following is the general checklist to be observed in case of all agreements (Horizontal/vertical):

i. The company has not jointly determined selling or purchase prices.
ii. The company has not jointly agreed on rebates/discounts.
iii. The company has not accepted recommendations of trade associations in relation to price
iv. The company has not indulged in collective price fixing or price coordination.
v. The company has not fixed/exchanged any price related conditions including information of competitors
vi. The company has not mutually agreed not to supply to certain customers or not to purchase from certain suppliers.

vii. The company has not fixed buying/selling/production quotas between competitors
viii. The company has not allocated or shared markets between competitors in respect of specific territories/products/customers.
ix. The company has not made a statement indicating advanced knowledge of the offers of the competitors.
x. The company has not made a statement that the bidders have discussed prices and reached an understanding.
xi. The company has not entered into any agreement with competitors that might make entry of the competitors difficult.

Specific checklist in case of horizontal agreements:

- The company has not agreed to adopt the same price list.
- The company has not discussed future prices, price changes or price formulas
- The company has not discussed terms and conditions of business.
- The company has not discussed marketing programmes or allowances
- The company has not shared market
- The company has not agreed to limit output or investment
- The company has not discussed or agreed about bids/tendering arrangements.
- The company has not discussed or exchanged confidential business information.

Specific checklist while bidding in a tender

- The company has not agreed to submit identical bids
- The company has not agreed as to who shall submit the lowest bid or cover bids.
- The company has not agreed not to bid against each other.
- The company has not agreed on common norms to calculate prices or terms of bids.
- The company has not agreed to squeeze out outside bidders.
- The company has not agreed on designating bid winners in advance on a rotational basis or on a geographical or customer allocation basis.
- The company has not agreed with any party to abstain from voting.

Specific checklist in case of written communication:

- The company has not used misleading language
- The company has not used ambiguous language that may convey suspicion
- The company has not used phrases to suggest that competitors will stick to agreed price

- The company has not used any expressions which are hyperbole and slangs.

NEEDS FOR COMPETITION COMPLIANCE PROGRAMME:
A robust competition compliance program is an absolute must for enterprises. A compliance programme provides a formal internal framework for ensuring that business comply with competition law.

It may include such elements as:

- Training to raise awareness of law
- Checklist to ensure compliance by individual staff.
- Independent reviews of agreements.
- Identify actual or potential infringements at an early stage.
- Enabling the company to take appropriate remedial action.

As a starting point, it is helpful to assess the extent to which competition law will affect the business and the risk of committing an infringement. In case the risk of infringement is high, more elaborate measures may be required to ensure compliance.

Competition compliance program (CCP) have the following three main purposes:

- They strive to prevent the violation of law
- Promote culture of compliance
- Encourage good corporate citizenship

CCP help to **reduce legal costs** in the short run by enabling the enterprise to **avoid violation of competition laws**, while in the long run, they **increase corporate competitiveness** by raising value of an enterprise.

Advantages of competition compliance programme:

a) Corporate officers and employees **maintain legal transparency**
b) Corporate officers **have advance perception** concerning the activity of employees that might violate competition laws
c) Corporate officers and employees **can avoid civil and criminal liability** resulting from violation of competition laws.

Other advantages:
Positive benefits to business:
An effective compliance programme can be a business enhancer offering positive benefits to the business and society. A company can obtain value from

good governance and compliance, develop a better culture sustain itself for long run and maintain its reputation.

Reputation and goodwill:
Companies that contravene the competition law may suffer damage to their reputation and brand development. Thus, an effective competition compliance program helps to protect the reputation and goodwill.

Mitigation of penalties:
Presence of an effective CCP also helps the company to save on lot of penalties and legal action.

One of the greatest benefit of a vigorous compliance program is the ability to protect the company from being victim of waste, fraud and abuse.

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LEGAL DUE DILIGENCE

CONCEPT:

Legal due diligence is **investigation of legal aspects** of business including regulatory compliance, contractual compliance, hidden liabilities etc. it involves detailed study of various legal documents of the company.

It is **scrutiny of all or specific parts of the legal affairs** of the target company depending on the purpose of legal due diligence. It is done with a view of uncovering any legal risks and provide the buyer with an extensive insight into the company's legal matters. The legal due diligence reduces future problems and ensures that no legal hurdles are faced in the deal.

Thus, the legal due diligence is **a precautionary operation** through which one can know the strengths and weaknesses of the company through the maximum possible information available.

Objectives of legal due diligence:

The objectives of due diligence may vary from case to case. However, some of the common objectives in most of the cases would be as follows:

- ✓ **Gathering of information** from the target company
- ✓ Uncovering the risks of the target company through **SWOT analysis**.
- ✓ **Improving the bargaining** position
- ✓ Cost benefit analysis
- ✓ Effect of risk and liability on the cost of the transaction
- ✓ Mapping of compliance requirements of the target company and the actual status.

Scope of legal due diligence:

The scope of due diligence **depends on the purchase** & **objectives of due diligence** and may vary from case to case. Thus, it is not possible to define the scope of due diligence specifically. However, there are certain aspects mentioned below, which any legal due diligence would cover within its scope:

1) **Regulatory compliance:** It would include compliance requirement of the company under various applicable laws, rules and regulations
2) **Contractual compliance:** It would include the compliance by the company under various material contracts by the company with suppliers, customers, employees etc and to verify whether the company has complied with the terms and conditions of different contracts.
3) **Compliance under intra corporate aspects:** It would include the compliance by the company under the intra company documents such as MOA/AOA, corporate policies, procedures etc.
4) **Financial aspects:** It includes thorough reading of the balance sheet to identify the financial obligations of the companies, penalties paid for violations in the past etc.
5) **Non financial aspects:** It includes aspects such as goodwill and reputation of the company.

6) **Cultural aspects:** In case of cross border transactions, compatibility and adaptability of the corporate cultures are to be analysed.

The following are the various important aspects covered in general under the legal due diligence. However, the actual scope would vary according to the nature of business decisions:

Under companies Act

- Compliance with provisions of AOA
- Related party transaction
- Appointment and remuneration of directors
- Contract with directors
- Loans to directors
- Borrowings of the company
- Distribution of dividend
- Filing of necessary returns
- Maintenance of statutory registers, minutes book etc.
- Such other aspects as may be required to be audited

Under Tax Laws:

- Status of tax assessments
- Identification of potential tax liabilities
- Pending notices and demands
- Impacts of business agreements on potential tax demands
- Aspects relating to double taxation

Under other Business Laws:

- Registrations and approvals from various authorities and risks on non-compliance.
- Compliance under pollution control laws.
- IPR related matters.
- Issues relating to immovable properties, title deeds etc.
- Compliance under FEMA, insurance laws etc.

Need for legal due diligence:

Legal due diligence allows getting the current information that is needed to make good business and financial decisions. These investigations help to avoid costly mistakes and can also help to avoid law suits caused by a bad business partnership.

Thus, legal due diligence is an art of managing a risk of undertaking a major business transaction. Only a careful and thorough legal due diligence process will help to avoid legal difficulties, unintended transfer of legal property and other drawbacks.

The need for legal due diligence may occur in the following occasions:

- Mergers/acquisitions
- Corporate restructuring

- Corporate governance related matters
- IPO/FPO
- Private equity
- General compliance requirement
- Commercial agreements
- Leveraged buy out
- Joint ventures etc.

Legal due diligence process:

There is **no definitive process** of legal due diligence. The process varies depending on the scope of work and nature of transactions.

In general, the following process is followed in case of legal due diligence:

1. Entering into MOU between the transacting parties along with confidentiality agreement.
2. Determination of scope of due diligence.
3. Calculation of time frame.
4. Drafting of various questionnaire and checklist
5. Obtaining access to records and data room agreement
6. Interaction with management and regulatory authority
7. Checking of regulatory and contractual compliance
8. Analysis of financial and non-financial information
9. Investigation of material issues
10. Drafting of preliminary report
11. Discussion with the management of the target company
12. Finalisation of the report
13. Determination of strategy

General document/aspects to be covered:

The following aspects should be looked into in the process of legal due diligence. However, the actual documents/aspects may vary depending on the situation:

Organisational and internal aspects	Financial aspects
• MOA/AOA • Minutes of all the meetings • Organisation chart • Statutory registers • Returns filed with ROC/ other authorities • Search/status report, if any. • Details of branches and subsidiaries • Registration documents under various laws • Documents/ reports filed with stock exchanges on shareholding pattern	• Financial statements for the last 5 years • Auditors qualification (if any) • Recent unaudited financial statements • Details of various reports published • Capital budgets and projections • Internal audit report (if any) • Unrecorded liabilities • Commitments/contingencies • Accounting policies • Relationship between profit and operating cash flows • Reliance on debt funds and usage of

and other information	debt • Debt repayment and potential debt trap • Working capital lock up
IPR/PATENT/R&D DETAILS	**HUMAN RESOURCES ASPECTS**
• Schedule of trade mark/IPR • Details of Indian and International patents with the company • Details of pending patent application • Copies of all the relevant agreements and documents • Details of threatened claims, if any.	• List of employees, their positions and salaries • Details of options given/vested under ESOP scheme • Bio-data of MP • Employee litigations • Employee harassment reports, if any • Cultural issues in case of cross border transactions.
ENVIRONMENTAL ASPECTS	**MATERIAL CONTRACTS**
• Environmental audit reports, if any • Details of environment permits and licenses • Hazardous substances used in company's operations • Copies of all the correspondence with environment authorities • Litigations or investigations, if any, on environmental issues • Contingent environmental liabilities or continuing indemnification obligations, if any.	• A schedule of all the subsidiary , partnership, or joint venture relationships and obligations, with copies of all related agreements • Copies of all contracts between company and employees, shareholders and other affiliates • Loan agreements, letter of credit or promissory notes etc • Security agreements, mortgages etc to which the company is a party • Any distribution agreements, sales representative agreements, marketing agreements etc • All non disclosure or non competition agreements • Other material contracts
Other aspects: • copies of any governmental licenses, permits or consents • any correspondence or documents relating to any proceedings of any regulatory agency • a list of all existing products or services or products/services under development • company's purchase policy, credit policy • details of largest customers • details of company's competitors • press release relating to the company.	

Possible HURDLES in carrying out a due diligence and remedial actions:

1. **Non-availability of information:** In many cases, the required information is not available or is insufficient to arrive at any solution.

2. **Unwillingness of target company's personnel in providing the complete information:** sometimes, the available information is also pretend to be non-available which proves to be a major hurdle in carrying out due diligence.
3. **Providing of incorrect information:** Providing incorrect information by the target personnel also acts as a major hurdles in the due diligence process.
4. **Complex tax policies and hidden liabilities:** The policies and structures may create a number of hidden tax liabilities which may not be easy to track
5. **Multiple regulations and its applicability:** Due to multiple legal regulations, the applicability of a particular rule cannot be easily interpreted and getting the legal opinion on it can be costly.
6. **Process in providing data:** Multiple layers of review and scrutiny before data is provided also delays the due diligence process.
7. **Absence of proper MIS:** Due diligence process would become difficult if there is no proper MIS in the company.

Actions to break hurdles in due diligence:

1. Focus follow up questions
2. Ask several people the same question
3. Polite persistence may help to overcome the hurdles
4. Independent check with regulatory authorities

Role of CS in legal due diligence:

CS is a competent professional who is regarded as a compliance management specialist and thus is competent to discharge the legal due diligence process efficiently.

While carrying out due diligence, the CS has to maintain confidentiality. Certain activities conducted during due diligence may breach confidentiality especially while interacting with external persons. Thus, in such situations, the CS as a thorough prefessional must maintain confidentiality at any cost.

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DUE DILIGENCE FOR BANKS

Introduction:

The RBI, vide a circular advised all scheduled commercial banks to obtain a certification (Diligence report) by a professional, preferably a company secretary, regarding compliance of various statutory applicable provisions as per the specimen given in the notification.

The RBI in December 2008, advised the bank to strengthen their information back up about the borrowers enjoying credit facilities from multiple banks as under:

i. At the time of granting fresh facilities, banks may obtain declaration from the borrowers about the credit facilities already enjoyed by them from other banks.
ii. Banks should exchange information about the conduct of the borrower's account with other banks at least at quarterly intervals.
iii. Obtain regular certification from a professional, preferably company secretary, regarding various statutory prescriptions.
iv. Make greater use of credit report.
v. Incorporate suitable clauses in the loan agreement regarding exchange of credit information so as to address confidentiality issue.

Need for Diligence Report:

In order to streamline consortium/multiple-banking arrangement, RBI has been making regulatory prescriptions from time to time regarding conduct of consortium/multiple banking.

Accordingly, the RBI in consultation with Indian banks Association, specified the framework to be observed by bank for improving the sharing/dissemination of information amongst the banks about the status of the borrowers enjoying credit facilities from more than one bank and also the banks are required to obtain regular certification of diligence report from a professional, a Company Secretary.

The Diligence Report covers many critical and relevant matters such as details of the Board of director, shareholding patterns, forex exposures and other compliances. The compact structure of the Diligence Report under its 25 paragraphs make it obligatory for a PCS to prepare the report after critical examination of all the relevant record & documents of the borrowing companies which demand a high degree of care skills and knowledge.

Important points in connection with report:

Period of Reporting:
The diligence report shall be made on half yearly basis.

Right to Access records and methodology for diligence Reporting:

To enable the PCS to issue the Diligence Report, the company should provide the PCS, access at all times to the books, papers & records whether kept at the registered office of the company or elsewhere.

The PCS shall also be allowed to require from the officers or the agents of the company, such information and explanations as the PCS may think necessary from the purpose of such reporting.

Reporting with Qualification:

The Qualification, reservation or adverse remarks, if any, may be started by the PCS at the relevant places. It is recommended that the qualifications, reservations or adverse remarks of the PCS, if any, should be stated in the thick type or in *italics* in the diligence reporting.

Professional responsibility and Penalty for false diligence report:

Any failure or lapse on the part of the PCS in issuing diligence report will attract the penalty for false reporting and disciplinary action for professional or other misconduct under the provision for CS Act, 1980. Additionally, the PCS will liable for any injury caused to any person due to his negligence in issuing the diligence report.

While preparing the report, the PCS should ensure that no field in the report is left blank. If there is nothing is reported or the field is not applicable to the company then the PCS should write "**none"** or "**nil"** or **"not applicable"** as the case may be.

Format of Diligence Report:

Diligence Report

To,

The Manager,

_____(name of the bank)

We examined the registers, records, book and papers of ____ Limed having it registered office at _____ as required to be maintained under Companies Act, 2013 and the rule made thereunder read with the provision of the Memorandum & Articles of Association as well as the provisions of the listing Agreement, if any, entered into by the Company with the stock exchange for the half year ended on____

In our opinion & to the best of our information and according to the examination carried out by us & explanation to us by the company, its officers and the agents, We report that in respect of the aforesaid period:

1. The management of the company is carried out by the board of directors & the board was duly constituted
2. The shareholding pattern of the company as on _____ was as detailed in annexure A
3. The company has altered the provisions of MoA/AoA (if any)
4. The company has not entered into any transaction with business entities in which directors of the company were interested.
5. The company has not advanced any loan to his directors
6. The company has made loans/investment in compliance of section 186
7. The amount borrowed by the company is within the borrowing limits of the company.
8. The company has not made any default in the repayment of deposits or loans
9. The company has created/modified charges as given in Annexure B
10. Principal value of forex exposure and overseas borrowings of the company is given in Annexure C
11. The company has issued and allotted the securities to the persons entitled thereto
12. The company has insured all its secured assets
13. The company has complied with the terms and conditions by the banks at the time of availing any facility
14. The company has declared and paid dividend to its shareholders as per the provisions of the companies Act
15. The company has insured fully all its assets
16. The name of the company and its directors does not appear in the defaulter's list of the RBI
17. The name of the company and its directors does not appear in the Specific Approval list of Export Credit Guarantee corporation
18. The company has paid all its statutory dues and satisfactory arrangements had been made for arrears, if any.
19. The funds borrowed from banks/financial institutions have been used by the company for the purpose for which it was borrowed
20. The company has complied with provisions of section 186
21. It has been observed from the report of the directors and auditors that the company has complied with applicable of Accounting Standards
22. The company has credited the required sum of the IEPF
23. Prosecutions initiated or show cause notice issued to the company are detailed in Annexure D
24. The company has complied with the provisions of the listing agreement
25. The company has complied with the provisions of the provident fund contributions

(Signature)

Place:
Date:

For (name of firm)
Name of PCS
Membership Number

(Annexures)

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ENVIRONMENTAL DUE DILIGENCE

"Earth provides enough to satisfy every man's needs, but not every man's greed"
- Mahatma Gandhi

Environmental problems often threaten the viability of the transactions. If a business transaction proceeds without environmental risks being correctly evaluated or addressed, they can significantly reduce the profitability of the acquisition.

Environmental failures may lead to financial, reputational damage and business discontinuity as well. Society is increasingly unwilling to tolerate harm to the environment and environmental risk can have serious negative *effects* on an organization's financial well being and its ability to achieve business objectives.

The following case studies are important in connection with the environmental failures:

Shri Ram Food and Fertilizer Case: (M.C. Mehta v. Union of India, 1987)

In this case, a major leakage of oileum gas affected a large number of persons, both amongst the workmen and public. The Supreme Court held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous and- inherently dangerous activity resulting in the escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such a liability is not subject to any exception.

Dehradun Valley Case (Rural Litigation &. Entitlement Kendra V. State of UP, 1988)

In this case, carrying haphazard and dangerous limestone quarrying in the Mussorie Hill range of the Himalaya, mines blasting out of the hills with dynamite, extracting limestone from thousands of acres had upset the hydrological system of the valley. The supreme court ordered the closing of the limestone quarrying in the hills to protect the right of the people to live in healthy environment with minimal disturbance of ecological balance.

Effluents by tanneries in the river Ganga (M.C. Mehta V. Union of India)

The court directed that the work of those tanneries be stopped, which were discharging effluents in River Ganga and which did not set up primary effluent treatment plants. It held that the financial incapacity of the tanners to set up primary effluent treatment plants was wholly irrelevant.

Court observed that there is a need for:

- Imparting lessons in natural environment in educational institutions
- Group of experts to aid and advise the court to facilitate judicial decisions
- Constituting permanent independent centers with professional public spirited experts to provide the necessary scientific and technological information to the court and
- Setting up environmental courts on regional basis with a right of appeal to the Supreme Court.

Need for Environmental Due Diligence:

Environmental failures may result in ethical disaster and business continuity. For any type of strategic decision, be it a strategic alliance, starting up a new venture, merger, acquisition and such other decision.

Important Reasons for performing environmental due diligence include:

- To assess hazardous substances emission and the mitigation measures through examination of Industrial sites.
- Regulatory compliances and the cost of non-compliances, if any
- Societal reaction to emission of effluents and its impact on the financial health of the company
- To have an overall Environmental Impact Assessment
- To suggest remedial course of actions and environmental management plan
- To assess the sustainability initiatives of the company and its potential impact on the business
- To allocate liabilities identified during the investigation

Regulatory framework relating to Environment:

Article 48A of the constitution directs the state to protect and improve the environment and safeguard forests and wildlife of the country.

Article 51A imposes a duty on every citizen of India to protect and improve the natural environment including forests, lakes, river and wildlife and to have compassion for living creatures.

Legislations:

The Water (Prevention and Control of Pollution) Act, 1974 was enacted to provide for the prevention and control of water pollution and the maintaining and restoring of wholesomeness of water in the country.

The Water (Prevention and Control of Pollution) CESS Act, 1977 was enacted to provide for the levy and collection of CESS on water consumed by persons operating and carrying on certain types of industrial activities.

Air (Prevention and Control of Pollution) Act, 1981 was enacted to provide for the prevention, control and abatement of air pollution in India.

Environment Protection Act, 1986 was enacted with the objective of providing for the protection and improvement of the environment.

Public Liability Insurance Act, 1991 is to provide for damages to victims of an accident which occurs as a result of handling any hazardous substance.

National Green Tribunal Act, 2010 was enacted for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or

incidental thereto.

For all these Acts, supporting rules are also given which contains the procedural aspects of these legislations. –

- The Water (Prevention and Control of Pollution) Cess Rules, 1978
- The Water (Prevention and Control of Pollution) Rules, 1975
- The Air (Prevention and Control of Pollution) (Union Territories) Rules, 1983
- The Air (Prevention and Control of Pollution) Rules, 1982
- The Environment (Protection) Rules, 1986
- The Public Liability Insurance Rules, 1991
- Hazardous Wastes (Management and Handling) Rules, 1989

Checklist on Major Compliances:

Environment Protection Act

Section/Rules	Important Provisions
Section 5 & Rule 4	➢ A company has to follow directions given by the CG ➢ The directions may include closure, prohibition of industry and such other orders ➢ Non-compliance: imprisonment up-to 5 years AND Fine up to 1 lakhs with additional fine up-to Rs. 5000 every day for continuing default ➢ Any person aggrieved by the direction may prefer and appeal to National Green Tribunal.
Section 7	➢ A company carrying on any industry or process shall not discharge any environmental pollutants in excess of the prescribed standards. ➢ Non-compliance will attract penalty as may be prescribed.
Section 8	➢ Company not to handle any hazardous substance except in accordance with such safeguard as may be prescribed. ➢ Non-compliance will attract penalty as may be prescribed.
Section 9	➢ A company shall be responsible for the discharge of any environmental pollutant and shall also intimate the fact of such occurrence or apprehension and to render all assistance, to such authorities as may be required. ➢ In case of non-compliance, any person who was directly in charge shall be deemed to be liable and punished accordingly.
Section 11	➢ A company has to give access to the Central Government or any officers empowered to collect samples of air, soil or other substance from other factory ➢ Non-compliance will attract penalty as may be prescribed.
Section 14	➢ Every company carrying on an operation, industry or process shall submit an environmental audit report for the financial year ending 31st March in the prescribed form to the concerned State Pollution Control Board. ➢ Non compliance will attract penalty as may be prescribed under section 15

Water (Prevention & Control of Pollution) Act, 1974

Section/Rule	Important Provisions
Section 20	➢ Directions from state govt. regarding abstracting water must be followed. ➢ Non-compliance will attract imprisonment for a term up to 3 months, OR fine, which may extend to Rs. 10,000 or both and in case of continuing default, additional fine up to Rs. 5000 for every day.
Section 25	➢ A company to take previous consent of the state board by making application in prescribed form to establish or take any step to establish any industry or operation or make any new discharge ➢ Non-compliance will attract imprisonment, for at least 1 year & 6 months but up to 6 years and with fine.
Section 31	➢ In case of any accident or unforeseen event or any poisonous, noxious or polluting matter is being discharged, then the person in charge of such place shall forthwith intimate the occurrence of such accident or event to the state board. ➢ Non-compliance will attract imprisonment up to 3 months, OR fine, up to Rs. 10,000 or both and in case of continuing default, additional fine up to Rs. 5000 for every day.

Air (Prevention & Control of Pollution) Act, 1981

Sections/rules	Important provisions
Section 21	➢ A company shall have to obtain prior consent of the state board to establish or operate any industrial plant in an air pollution control area. ➢ Any non-compliance will attract imprisonment for a term which shall be between 1 and half year to 6 years and with fine.
Section 22	➢ Company shall not operate any industrial plant in any pollution control area, which shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the state board. ➢ Any non-compliance will attract penalty u/s 37 as mentioned above.
Section 24 (2)	➢ The company operating any control equipment or any industrial plant shall be bound to render all the assistance to the empowered by the State Board. ➢ Any non-compliance will attract penalty under Section 39

Environmental Guidelines for Industries by Ministry of Environment

The environmental guidelines are issued for industrial set up which gives a clear instructions in respect of the following:

Location of Industry: Environmental guidelines are issued for siting of industries to ensure optimum use of natural and man-made resources in sustainable manner with minimal depletion, degradation and/or destruction of environment. These directions are in addition to the existing directions under other statutes.

Areas to be avoided: In finalizing the site for the industry, care should be taken to minimise the adverse impact of the industries on the immediate neighbor hood as well as distant places.

With a view to protect the environment and neighbor hood areas, the sites shall maintain the following distances from the areas listed:

Ecologically and/or otherwise sensitive area: At least 25 km (Ecological/sensitive areas include Monuments, Scenic areas, Beach resorts, Health resorts, seismic zones, tribal settlements etc.)

Coastal Areas: At least 1/2 km from High Tide Lane

Flood Plain of the riverine systems: At least 1/2 km from affected area.

Transport/Communication system: At least 1/2 km from Highway and railway

Major settlements (3,00,000 population**):** Depending on the growth of the settlement, the industry shall be sited at least 25 km from the projected growth boundary of the settlement.

Economic and social aspects to be considered: Economic and social factors are recognized and assessed while siting and industry. Industries are required to be sited striking a balance between economic and environmental considerations.

The following points are important in this regard:

- No forest land shall be converted into non-forest activity
- No prime agricultural land shall be converted into industrial site
- Within the acquired site, the industry must locate itself at the lowest location Land acquired shall be sufficiently large
- The green belt between two adjoining large scale industries must be 1 km
- Associated township of the industry must be created at a space having physiographic barrier between the industry and the township
- Each industry is required to maintain 3 ambient air quality measuring stations within 120-degree angle between stations.

Environmental Impact Assessment:

The purpose of EIA is to identify and evaluate the potential impacts of development and on the environment system. It is an useful aid for decision making based on understanding of the environment implications including social cultural and aesthetic which could be integrated with the analysis of the project cost and benefit.

While all industrial projects may have some environmental impacts, all of them may not be significant enough to warrant elaborate assessment procedures. The need for such exercises will have to be decided after initial evaluation of the possible implications of a particular project and its location.

The projects, which could be subjected to EIA include the following:

- Those, which can significantly alter the landscape, land use pattern.
- Those, which need upstream development activity like assured mineral and forest products supply.

- Those involving manufacture, handling and use of hazardous materials.
- Those, which are sited near ecologically sensitive areas, hill resorts.
- Industrial estates with units which could cumulatively cause significant environmental damage.

The EIA should be prepare on the basis of the existing background pollution vis-a-vis contribution of pollutants from the proposed plant.

Thus, preparation of EIA is required for formulation, implementation and monitoring of environmental protection measures during and after commissioning of projects.

ISO Standards for Environment:

The ISO 14001 addresses various aspects of environmental management. It provides practical tools for companies and organizations looking to identify and control their environmental impact and constantly improve their environmental performance.

Elements of the ISO 14001 standard:

ISO 14001 contains the core elements for an effective environmental management system. It can be applied to both service and manufacturing sectors.

The main elements of the standards are:

1. Planning
2. Implementation and operation
3. Checking and corrective action
4. Management review
5. Continuous improvement

Environmental Management Plan (EMP) for commissioning of projects

Preparation of EMP is required formulation, implementation and monitoring of environmental protection measures during and after commissioning of projects.

The plans should indicate the details as to how various measure have been or are proposed to be taken-including cost components as may be required. Cost of measures for environmental safeguards should be treated as an integral component of the project cost and environmental aspects should-be taken into account at various stages of the projects right from conceptualization to execution and operation.

The management plans should be necessarily based on considerations of resource conservation and pollution abatement, some of which are:

Liquid effluents:

Effluent from the industrial plant should be treated well as per the standards. Special precautions should be taken regarding flight patterns of the birds in the area and efforts should be taken to re-use water and its conservation.

Air pollution:

The emission levels of pollutants should conform to standards and adequate control equipment

should be installed.

Solid wastes:
Waste disposal areas should be planned keeping all the surroundings and neighbouring villages in mind. Reactive materials should be disposed off after immobilizing it and intensive tree plantation program on disposal areas should be undertaken.

Noise and Vibration:
Adequate measures should be taken to control of noise and vibrations in the industry

Occupational Safety and Health:
Proper precautionary measures should be taken for adopting occupational safety and hazards.

Prevention, maintenance and operation of Environment Control Systems:
Adequate safety precautions should be taken and a system of inter locking should be implemented where highly toxic compounds are involved

House Keeping:
Proper house keeping and cleanliness should maintain both inside and outside the industry.

Human Settlements:
Residential colonies should be located away from the solid and liquid waste dumping areas. Persons who are displaced should be properly rehabilitated.

Transport systems:
Proper parking places should be provided; proper road safety signs both inside and outside the plant should be displayed to avoid accidents.

Reuse of waste products:
Efforts should be made to recycle or recover the waste materials to the extent possible.

Disaster planning:
Proper disaster planning should be done to meet any emergency situation arising due to fire, explosion, and sudden leakage of gas etc.

Environment Management Cell:
Each industry should set up a cell with trained personnel to take up the responsibility of environmental management.

Preparing a risk analysis matrix:
Preparation of Risk analysis matrix includes the following aspects:

Nature of business:
It covers the nature of industry, amount of pollution in the process, period of existence, number of subsidiaries, details of stakeholders, turnover, CSR activlt.es etc.

Areas of operations: It covers location of site operations, degree of diversification of products, location of sites etc.

Identification of potential issues:

It covers interaction with internal stakeholders such as employees, labours as well as external stakeholders such as local community, NGO etc.

Potential issues may be regulatory non-compliance, health hazard, location of industry, amount of noise, lack of disaster planning, inadequate safety system, improper water disposal systems etc.

Impact analysis:

It covers cost of regulatory non-compliance, low level of employee morale, degree of reputation risk, agitations by local community etc.

Suggestions and mitigation measures:

It covers compliance management system, proper disposal of wastes, strong safety management system, education and training of employees relating to environmental issues, frequent interaction with local community, sustainability initiatives and its reporting in the Annual Report.

Environmental Management as a tool for value creation:

Proper compliance of laws relating to environment will increase the credibility and would also create value for business organization. There is strong evidence and proof that improved environmental performance is positively correlated with increased competitiveness.

Companies should not view the total amount to be spent on protection of environment as expenditure. They should consider that it is an investment for creating value, for building goodwill and for making the presence felt.

Because of the various advantages and value creation, almost all business across the world come forward to introduce and implement proper implementation of environmental management.

The advantages of proper environment management are as follows:

- It avoids punishment, which includes prosecution including fines.
- Eliminates increased liability to environmental taxes.
- Avoids loss in value of land.
- Avoids destruction of brand values, loss of sales, consumer boycotts and inability to secure licenses.
- Avoid loss of insurance cover and contingent liabilities.
- Fixes and ensures more accurate and comprehensive information about responsibility of business houses towards environment for improving corporate image.
- Helps to attain competitive advantage in respect of identification of costs and benefits.
- It will boost employee morale and organization to attain a good reputation in the market.
- Ultimately adds value to the economy as a whole.

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SEARCH AND STATUS REPORT

INTRODUCTION

A Charge is created when the security on the property of the Company is conferred on another person. Thus, the property of the Company is made available to the lending company as a Security.

Banks and Financial Institutions, before granting loans to Companies, generally obtains a Status Report on the position of borrowings made by the Company and the particulars of Charges already created by the Company on its assets. It is done to secure the amount proposed to be lent.

The Search and Status report acts as a tool containing critical information on status of charges. It is basically a report furnished based on information gathered by a search and inspection of a specific records.

The Search and Status report is not merely a verbatim reporting of information but also supplemented by observations and comments of the person who furnishes the report. Normally, Practicing Company Secretaries are entrusted with the preparation of Search and Status report.

Indian Banks Association had issued a circular recommending to the Chief Executives of All member banks that the latter may utilize the services of Company Secretaries for the issuance of Search and Status report.

SCOPE AND IMPORTANCE

The scope of Search and Status report depends on the requirement of the Bank or Financial institutions concerned. The following points may be noted in this regard:

- A search and status report issued by a PCS enables the Banks/Financial Institutions to evaluate the borrowing company's credibility.
- With the help of Search and Status report, the Banks can take a conscious decision regarding the quantum of loan/credit facility to be sanctioned.
- Search and Status report thus enables the bank to take and informed and speedy decision and also assures them about the credit worthiness of the borrowing company.
- Search and Status report acts as a 'Progress report' on the legal aspects and a ready reckoner of the exact position.

CONTENTS OF SEARCH AND STATUS REPORT

A search and status report contains two parts; first being 'Search' (involving physical inspection of documents) and the second part is 'Status' Which comprises reporting the information and giving observations on the basis of the information as made available by Search.

The search and status report generally contains the reporting and commenting on the following main information:

PARTICULARS OF CHARGES

When a charge on a property is created or modified, the Company is required to intimate about it to the ROC by filing **Form CHG- 1** (in cases other than debentures) or **Form no. CHG-9** (in cases of charge on debentures).

The ROC issues a certificate of registration (Format **CHG-2**) or Certificate of Modification (Format **CHG-3**), which acts as a conclusive evidence about the registration/modification of charge.

When the Charge is satisfied, the Company must file **CHG-4** with the ROC, which, if satisfied, issues a Memorandum of Satisfaction in **CHG-5.**

If an application for condonation of delay is made to ROC /Central Government then the details about filing of **CHG-10 (in case of ROC)** and **CHG-8(in case of Central Government)** will be available in the records.

If a property already subject to charge is proposed to be kept as security by the Company then the search and status report specifically mentions this and brings it to the attention of the lending institution.

PUBLIC INSPECTION OF DOCUMENTS

MCA offers a facility for public Inspection of documents of the Companies by any person interested on payment of A fee of 100 per company per inspection.

The documents are made available for viewing and downloading for 3 hours after the user started viewing it and can be viewed only within 7 days after the payment has been confirmed.

This facility is very useful for the PCS to create and submit the Search and Status report.

Once the documents relating to creation and other particulars of charge are analysed the Search and Status report is prepared. Most of the Banks have their specific format for the Search and Status report and that format have to be followed while submitting Search and Status report.

All the important details must be incorporated in the report and each word of the report should be checked and rechecked before the Search and Status report is signed.

VERIFICATION OF DOCUMENTS RELATING TO CHARGE

The important particulars from the register of charges **(CHG-7)** such as date of registration, amount of the charge, particulars, date of modification (if any), if charge is satisfied then all the supporting documents must be verified.

Non-essential particulars of charge need not be given in the Search report unless specifically so required by the client.

PREPARATION AND COMPILATION OF SEARCH REPORT

Before proceeding with the inspection, it would be advisable for PCS to know if the concerned bank/Financial Institution or the client requires the search report, in any specific format and if so , the content of the format.

If the client requires particulars of the charges pending registration, it is advisable to give a separate report based on the verification of the registers and records maintained by or available with the company.

To summarise, the following points are important in connection with the Search/Status Report:

- The search and status report should give exact details of particulars of charges/modifications/satisfactions as effected, filed and registered from time to time.
- Check the required details regarding property on which the charge is created, name of the lender and such other details.
- A search and status report should always be supported by expert observations on the charges created by the borrower in respect of the lender.
- It is advisable to mention in the Search report by way of a footnote as to what was the last document available for inspection when the scrutiny was taken/completed.
- The search report should also specifically mention about the charge which is registered at the ROC but the concerned documents are not available for inspection.

The PCS giving the search report has to certify that his report has been submitted on the basis of the search carried by him on a particular date, with the Registrar's office/MCA portal. He is also required to certify that the company has filed all returns/forms within stipulated time with the ROC office and such other details regarding compliance.

ADDITIONAL REPORT

Some financial institution requires a Report by Company Secretary in Practice, on certain additional points relevant and important for them. A separate report can be given after inspecting or verifying the documents and records available with the Registrar and/or the Company.

Some of the examples of additional points normally covered under such additional report are as follows:

Items	Records to be verified
Name of the Company	MOA, Certificate of Incorporation
Registered Office	INC 22/23, INC-28 , MGT-14
Present Directors	DIR-12, Register of Directors
Authorized Share Capital	SH-7, MGT-14

REQUIREMENTS OF VARIOUS FINANCIAL INSTITUTIONS AND OTHER CORPORATE LENDERS

The All India Financial Institutions while granting term loans to companies insist on certain formalities to be completed by a Company availing loan. These include furnishing of certificate by PCS in regard to the following:

- Necessary power of a company and its directors to enter into an agreement.
- Borrowing limits of a Company under Section 180(1)(c) of the Companies Act, 2013 including other details
- List of Members of the company
- Copies of resolutions passed at meetings.

Many state financial /Industrial/Development corporations have also started accepting the certificate given by PCS.

NECESSARY POWERS OF A COMPANY AND ITS DIRECTORS TO ENTER INTO AN AGREEMENT

In the absence of any provision to the contrary in the Articles of Association, the borrowing powers may be exercised by the Board of Directors.

Section 179 of the Companies Act requires that the power to borrow moneys can be exercised by the Board of Directors only by means of resolution passed at meetings of the Board. This power of borrowings may be delegated to any committee of directors. Every resolution delegating this power should specifically mention the total amount up-to which moneys may be borrowed by the delegate.

BORROWING LIMITS AND COMPLIANCE OF SECTION 180(1)(C)

This section restricts the Board of Directors of the company 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.

To make such borrowings, the Company will have to call General Meeting and take approval by way of special resolution.

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.

The resolution shall specify the total amount up-to, which the monies may be borrowed by the Board of Directors.

IMPORTANT: SECTION 280

Shall not apply to a Private Limited Company.

FORMAT OF SEARCH REPORT

Search report on the
charges on the assets of
ABC Private Limited
CIN:

We have carried out the search of the Register of Charges and the documents relating to the charges on the assets of the above named company as registered by and available for inspection at the ROC office---------- and hereby report that the following particulars of charges in respect of the above named company have been so registered:

Sr. No.	Date of Registration	Instrument Creating Charge and date	Amount of charge	Short particulars of property charged
(1)	(2)	(3)	(4)	(5)

Name & Address of Person in whose favour the charge is created	Particulars of Modification		
	Instrument Creating Charge and date	Amount of charge	Short particulars of property charged
(6)	(7)	(8)	(9)

Particulars of Satisfaction		
Date of Satisfaction	Amount of charge	Other remarks
(10)	(11)	(12)

Opinion:
Signature with Seal
Name & Address
COP Number
Place
Date

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COMPLIANCE MANAGEMENT

CONCEPT

Compliance Management means management of all the compliances that are applicable to an organization and ensuring that all the applicable laws/rules/regulations and provisions are complied in time. The system/process/hierarchical structure, which ensures the timely compliance is known as Compliance Management System.

Thus, compliance management system is the method by which corporate manage the entire compliance process. It includes the compliance program, compliance audit, compliance report etc, together they are known as compliance solution.

Company secretaries with core competence in compliance and corporate Governance play a crucial role in the corporate compliance management as it involves a full process of research and analysis as well as investigation and evaluation.

Similarly, for ensuring effective implementation of the Compliance Management System, the participation of the senior management in the development and maintenance of a compliance program is necessary.

Companies that go extra mile with their compliance programs lay the foundation for the control environment and can easily avoid the penalties. Moreover, the companies that follow effective compliance management programme often enjoy healthy return and stronger market capitalization.

NEED FOR COMPLIANCE

Business executives and management faces tremendous pressure to comply with multiple regulations. Corporate Accountability is fixed which makes it obligatory for corporates to ensure timely compliance with all the applicable laws.

The organizations face mounting pressures that are driving them towards a structured approach to enterprise wide compliance management. Increased liability and regulatory oversight has amplified risk to a point where it demands continuous evaluation of compliance management systems.

Further, the various compliances that the organizations face increase the risk of non-compliance, which may have potential civil and criminal penalties.

The pressure and the urge to timely comply with all the laws, rules and regulations has resulted in putting onerous responsibility on the Company Secretaries to guide the companies and make them compliant. Thus, now, the Company Secretary must ensure that the Companies adhere to necessary industry and government regulations, change business processes according to legislative change and react quickly and cost effectively.

SIGNIFICANCE OF CORPORATE COMPLIANCE MANAGEMENT

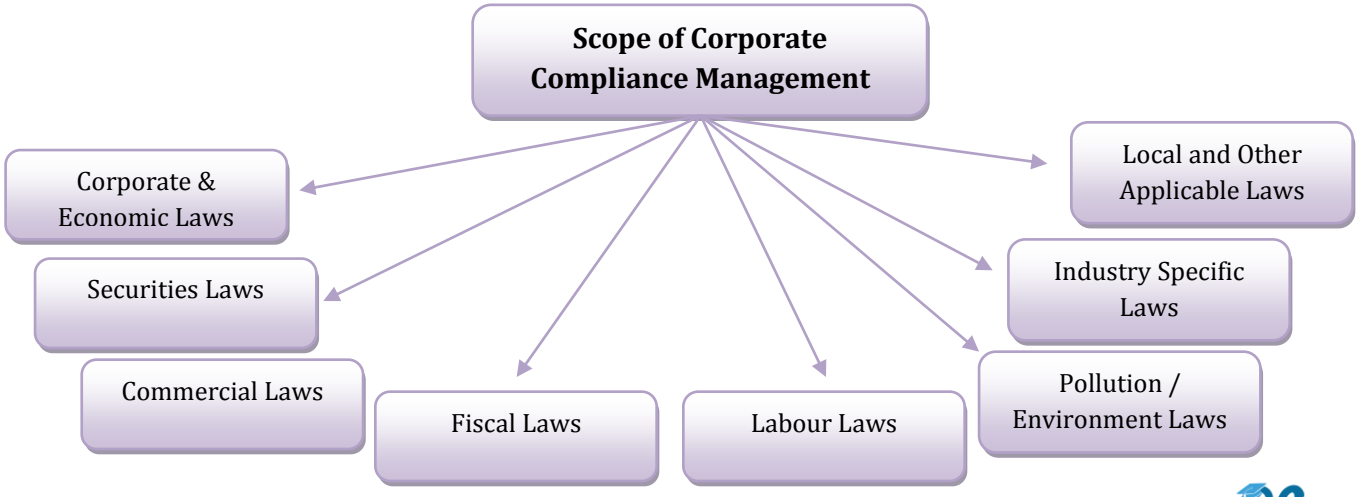
- Better compliance with law
- Real time status of legal/statutory compliances
- Real time status on the progress of pending litigation
- Cost savings by avoiding penalties
- Better brand image and positioning of the company in the market
- Enhanced credibility and credit worthiness
- Goodwill among the shareholders, investors and stakeholders
- Recognition as good corporate citizen.

RISK OF NON-COMPLIANCE

- Cessation of business activity
- Civil action by the authorities
- Punitive action resulting in fine against the company and officials
- Imprisonment of the defaulting officers
- Public embarrassment
- Damage to the reputation of the company and its employees
- Plummeting stock prices and threat of delisting of shares
- Attachment of Bank accounts

SCOPE OF CORPORATE COMPLIANCE MANAGEMENT

Corporate compliance management should broadly include the compliances of:



CORPORATE & ECONOMIC LAWS:

- Companies Act along with rules, regulations and procedures
- Secretarial Standards/Accounting standards
- FEMA
- FCRA
- Competition Act
- Prevention of Money Laundering Act
- Emblems and Names (Prevention of Improper Use) Act, 1947
- Essential Commodities Act
- Intellectual Property Rights Laws

SECURITIES LAWS:

- SEBI Act
- SCRA
- Provisions of listing agreement
- Depositories Act
- Various rules, regulations and guidelines issued by SEBI

COMMERCIAL LAWS INCLUDING IPLAWS:

- Indian contract act
- Transfer of property Act
- Arbitration and Conciliation ct
- Negotiable Instrument Act
- Sale of goods act

FISCAL LAWS:

- Income Tax Act
- Central Excise Act
- Customs Act
- CST/VAT GST
- Service Tax

LABOUR LAWS

- Minimum wages Act
- Payment of Bonus Act
- Payment of Gratuity Act
- Factories Act
- Industrial Dispute Acts
- Employees Provident Fund and Misc. Provisions Act

- Employees State Insurance Act
- Employees Compensation Act
- Maternity Benefit Act
- Contract Labour (Regulation & Abolition) Act

POLLUTION/ENVIRONMENT CONTROLLAWS

- Air (Prevention and Control of Pollution) Act, 1981
- Water (Prevention and Control of Pollution) Act, 1974
- Environment Protection Act
- Public Liability Insurance Act
- National Green Tribunal Act

INDUSTRY SPECIFIC LAWS

As may be applicable to specific categories of Industry.

LOCAL ANDOTHER APPLICABLE LAWS

Local administrative, civic, shops/establishment and related laws.

COMPLIANCE MANAGEMENT PROGRAMME

The Objective of Compliance Programme is to manage the compliance risk effectively, to promote ethical culture in the organization. Compliance management through systematic processes helps in achieving 100% compliance with letter and spirit.

OBJECTIVES OF COMPLIANCE PROGRAMME

i. To establish and maintain centralized mechanism to ensure compliance
ii. To establish and maintain effective co-ordination of functional units
iii. Effective communication of the changes in the regulatory mandates
iv. To provide training on compliance requirements at regular intervals.
v. To establish effective monitoring and control systems.
vi. To introduce effective whistle blowing mechanism
vii. To establish compliance dashboard.

Compliance is a permanent and integral part of business process that is ongoing and needs continuous tuning in line with the business environment and the applicable regulatory ambit.

The Corporate Compliance Officer (CCO) is the custodian of the Corporate Compliance Plan. The CCO should report on compliance activities from time to time. Similarly, the Board may constitute Corporate Compliance Committee to oversee the workings relating to compliances and also create a checklist specially designed for compliance systems.

COMPLIANCE PROGRAM SHOULD PROVIDE PROCESSES FOR:

i. Preventing non-compliances through various mechanisms
ii. Detecting non-compliances through mechanisms such as effective whistle blowing, audits etc.
iii. Responding to non-compliance through remedial action, implementation of control tolls for non-recurrence of such non-compliance etc.

ESTABLISHMENT OF COMPLIANCE MANAGEMENT FRAMEWORK

COMPLIANCE IDENTIFICATION

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

COMPLIANCE OWNERSHIP

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

COMPLIANCE AWARENESS

The next important step in establishing a legal compliance management is creation of awareness of the various legal compliances amongst those responsible. Many a times, compliances are

handled by persons who are not fully aware of the requirements of the legislations and hence creating appropriate awareness amongst the owners is very important.

COMPLIANCE REPORTING

Compliances or Non-compliances should be reported to the concerned. Reporting of non-compliances ensures that appropriate corrective action is taken by the responsible person.

Corporate Compliance Reporting (CCR):

A brief process of Compliance MIS or CCR is as follows:

a. Functional heads for the reporting of various laws has to be identified
b. Each of the functional heads may collect and classify the relevant information from the various units/locations
c. The report shall carry an affirmation from the functional heads that the said report has been prepared based on the inputs received from the various units/officers and then list out the specific compliances/non-compliances
d. Each of the functional head will forward their respective compliance report to the CS/MD
e. The CS would brief the MD, give his opinion and then MD will consolidate all the reports and give under his signature a comprehensive CCR to the Board for its information, advice and noting.

The whole process of CCR is contingent on the creation and implementation of comprehensive legal Management Information System.

PERIODICAL COMPLIANCE MIS

For effective implementation of Corporate Compliance Management System, a Management Information System (MIS) must be developed which will ensure periodical compliances with all the applicable laws and regulations. An effective reporting framework, fixing responsibility and creating awareness are just few of the steps, which will ensure timely compliance and reporting under the Compliance Management System.

Information technology can be used to create a real time and more effective MIS for compliance management.

ROLE OF INFORMATION TECHNOLOGY IN COMPLIANCE MANAGEMENT SYSTEMS THROUGH WEB BASED COMPLIANCE SYSTEMS:

'Real Time Monitoring' of the audit compliance is a must and thus information technology plays an effective role in implementation of the Corporate Compliance Management Program across various departments of an organization.

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

Many companies are introducing Comprehensive, web based compliance system that links the entire organization and offers a full-fledged compliance management system. Web based compliance software are available industry wise and tailor made compliance software can also be made according to the company specifications which has to be updated on continuous basis.

ROLE OF ETHICS IN COMPLIANCE MANAGEMENT SYSTEM

Ethics is the intent to observe the spirit of law. An ethical compliance management programme ensures that the mechanisms are in place to provide early warning of deviations from guidelines and regulations. It is essential to create or expand a culture of trust, enthusiasm and integrity.

FUNCTIONS OF COMPLIANCE MANAGEMENT SYSTEM/SYSTEMS APPROACH TO COMPLIANCE MANAGEMENT

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

COMPLIANCE DASHBOARD (PLATFORM)

The compliance programs provide a single enterprise wide platform for all users to track and trend compliance events. External, Internal auditors and compliance officers can use the dashboards to make decisions on the compliance status of an organization.

POLICY AND PROCEDURE MANAGEMENT

A Compliance management system provides a well-designed document management system which forms the basis of managing the entire lifecycle of policies and procedures within an enterprise.

EVENT MANAGEMENT

The compliance management system gives a readily available way to track events, cases and incidents across the extended enterprise.

RULES AND REGULATIONS

A well designed compliance management system provides the capability for the organisation to continuously stay in sync with changing rules and regulations.

As soon as there are any regulatory changes or amendments, the various departments should be notified proactively through' 'email based' approach. Thus, a well-designed compliance management program offers upto date regulatory alerts across the enterprise.

AUDIT MANAGEMENT

Audits have now become part of the enterprise core infrastructure. In addition to financial audits, appropriate evidence gathered in internal Audits become critical in defending compliance to regulations.

QUALITY MANAGEMENT

A well-designed compliance management program incorporates and supports on-going quality initiatives. Organizations generally have quality initiatives as per the industry mandates such as ISO certifications. Compliance and Quality are two sides of the same coin.

TRAINING MANAGEMENT

Most of the compliance program often requires evidence of employee training. To ensure this, the compliance office has to work closely with HR department to facilitate employee training.

COMPLIANCE TASK MANAGEMENT

Organizations must plan, manage and report status of all compliance related activities from a centralized solution.

APPROACHES TO COMPLIANCE SOLUTIONS

There are various companies offering compliance solutions. Following approaches are adopted for creating or enhancing an ethics and compliance programs for companies:

RISK/CULTURAL ASSESSMENT

Through employee surveys, interviews and document reviews, a company's culture of ethics and compliance at all levels of the organization is validated and reports and recommendations are prepared accordingly.

PROGRAM DESIGN UPDATE

In this phase, compliance solution providers help company in creating guideline documents that outline the reporting structure, communications methods and other key components of code of ethics and compliance program.

POLICIES AND PROCEDURES

In this phase, compliance solution providers help company to develop or enhance the detailed policies of the program, including issues of financial reporting, antitrust, conflicts of Interest, gifts and entertainment, records accuracy etc.

COMMUNICATION, TRAINING AND IMPLEMENTATION

Even the best policies and procedures are useless if they are not institutionalized and thus the new policies must be very clearly communicated, proper training is to be provided and the compliance solutions should be implemented on time basis.

ONGOING SELF ASSESSMENT, MONITORING AND REPORTING

The cultural assessment, mechanisms and processes put in place including employee surveys, internal controls and monitoring and auditing programs, help organizations achieve sustained success.

APPARENT, ADEQUATE AND ABSOLUTE COMPLIANCE

Corporates are expected to comply with the regulatory prescriptions in their true letter and spirit. Good corporate governance demands compliances level that match the intentions of the legislature, expectations of stakeholders and requirements of regulators. The compliances generally fall in three categories as follows:

APPARENT COMPLIANCE

It is a disguise form of non-compliance, which is worse than non-compliance. The classic example is preparing notice, agenda and minutes of the meeting, which are not actually held.

ADEQUATE COMPLIANCE

It is compliance in letters. The aspects specified in law are complied in letters without getting into the spirit of the law. eg : box ticking practices.

ABSOLUTE COMPLIANCE

These compliances are those, which are in line with the spirit and intent of the law. When a company complies with law in spirit, it gains public confidence as well.

Example: Infosys is considered to be a trendsetter and its report is even recommended by SEC as ideal report. The company has achieved trust of stakeholders by having a strategic balance between wealth and welfare.

Experts view Annual Report as self-appraisal report of the Company. The shift from shareholder concept to stakeholder concept has necessitated the corporates to provide a transparent report, which is viewed by all stakeholders.

SECRETARIAT AUDIT AND THE COMPLIANCE MANAGEMENT SYSTEM

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

- Nature of business
- Geographical domain of its area of operations
- Size of the company both in terms of operations as well as investments, technology, multiplicity of business activities and manpower employed.
- Jurisdiction in which it operates
- Whether the company is a listed company
- Other important details

Based on the above, the Secretarial Auditor can constitute a broad idea about the desired system and process to be adopted by a Company. Auditing of compliance system is not a fault finding exercise, rather a device to scale up compliance mechanism of the company commensurate to its size and operations.

It is desired that Secretarial Auditor as an expert in corporate compliance would advice the companies to build up strong corporate compliance system in case if the system appears to be insufficient during the audit process.

ROLE OF COMPANY SECRETARY IN COMPLIANCE MANAGEMENT SYSTEM

A Company Secretary is the Compliance Manager of the Company. Corporate disclosures, which play a vital role in enhancing corporate valuation is the forte of a Company Secretary. A Company secretary has to ensure that these disclosures are made to shareholders and other stakeholders in true letter and spirit.

Thus, a company secretary is the professional who guides the Board and the company in all matters, renders advice in terms of compliance and ensures that the Board procedures are duly followed, best global practices are brought in and the organization is taken forward towards good corporate citizenship.

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MISCELLANEOUS
Recent Amendments/Updates in DD syllabus

NEW REGULATIONS BY SEBI
SEBI (RESEARCH ANALYST) REGULATIONS, 2014

These regulations lay down the eligibility criteria for seeking registration certificate and management of conflict of interest and disclosure requirements.

As per these regulations, Research Analyst is a person who is responsible for :

i. Preparation or publication of content of the research report or
ii. Providing research report or
iii. Making buy/sell/hold recommendations or
iv. Giving price targets or
v. Offering any opinion concerning public offer

It does not matter whether or not the job title of the person is 'Research Analyst' or not. It also includes any associated person who reports directly or indirectly to such a research analyst in connection with activities provided above.

Any entity engaged in issuance of research report or research analysis will also be included in the term 'Research Analyst'.

IMPORTANT POINTS

- No person shall act as research analyst or research entity unless he has obtained a certificate of registration from SEBI under these regulations.
- The certificate of registration granted shall be valid for a period of 5 years from the date of its issue.
- Investment Advisors, Credit Rating agencies, Portfolio managers, AMC, Alternative
- Investment Funds are exempt from these regulations.
- A research analyst who is an individual shall have a net tangible asset of value of not less than one lakh. If research analyst is a body corporate or LLP, then it should have a net worth of not less than 25 lakhs.

SEBI (INFRASTRUCTURE INVESTMENT TRUSTS) REGULATIONS, 2014

InvIT or Infrastructure Investment Trust shall mean the trust registered as such under these regulations.

The salient features of these regulations are as follows:

- The trustee of an InvIT shall be a SEBI registered debenture trustee who is not an associate of the sponsor/manager.
- InvIT shall invest in infrastructure projects either directly or through SPV
- An InvIT shall hold or propose to hold controlling interest and more than 50% of the equity share capital or interest in the SPV
- Sponsors shall collectively hold not less than 25% of the total unit of InvIT on post issue basis.
- The proposed holding of the InvIT in the underlying asset shall be not less than 500 crores and the offer size shall not be less than 250 crores at the time of initial offer.

SEBI (REAL ESTATE INVESTMENT TRUST) REGULATIONS, 2014

REIT shall mean a trust registered as such under these regulations.

THE SALIENT FEATURES OF THESE REGULATIONS ARE AS FOLLOWS:

- The trustee of an REIT shall be a SEBI registered debenture trustee who is not an associate of the sponsor/manager.
- REIT shall invest in commercial real estate assets, either directly or indirectly through SPV.
- Such SPV shall not invest not less than 80% of its assets directly in properties and shall not invest in other SPV
- Units of REIT shall be mandatorily listed on recognized, stock exchange and trading lot for such unit shall be 1 lakh.
- The REIT may have multiple sponsors not more than 3, subject to each holding at least 5% of the unit of REIT
- A REIT shall invest in at least 2 projects with not more than 60% of value of assets invested in one project.

OTHER UPDATIONS

SINGLE REGISTRATION FOR DEPOSITORY PARTICIPANTS

If a new entity desires to act as participant in any of the depository, then the entity shall apply to SEBI for certificate of initial registrations through the concerned depository in the manner prescribed in the DP regulations.

If an entity has been granted to a certificate of registration to act as a participant through one depository and wishes to act as a participant with other depository, then it shall directly apply to the concerned depository for approval in the manner as prescribed in the DP regulations.

The concerned depository, on receipt of the application, may grant approval to the entity after exercising due diligence and on being satisfied about the compliance of all eligibility requirements.
Then the participant shall apply to SEBI for permanent registration through any of the depositories in which it is acting as a participant.

SEBI COMPLAINTS REDRESS SYSTEM (SCORES)

SEBI launched a centralized web based complaints redress system (SCORES). This would enable investors to lodge and follow up their complaints and track the status of redressal of such complaints from anywhere.

This would also enable the market intermediaries and listed companies to receive the complaints from investors against them, redress such complaints and report redressal. All the activities starting from lodging of a complaint till its disposal by SEBI **would be carried online in an automated environment** and the status of every complaint can be viewed online at any time.

An investor, who is not familiar with SCORES or does not have access to SCORES, can lodge complaints in physical form. However, such complaints would be scanned and uploaded in SCORES for processing.

SCORES, which has been developed by National Informatics Centre, Government of India, is web enabled and provides online access 24 x 7.

THIS HAS THE FOLLOWING SALIENT FEATURES:

- Complaints and reminders thereon are lodged online at anytime from anywhere;
- An email is generated instantaneously acknowledging the receipt of the complaint and allotting a unique complaint registration number for future reference and tracking;
- The complaint moves online to the entity (intermediary or listed company) concerned for its redressal;
- The entity concerned uploads an Action Taken Report (ATR) on the complaint;
- SEBI peruses the AIR and disposes of the complaint if it is satisfied that the complaint has been redressed adequately;
- The concerned investor can view the status of the complaint online;
- The entity concerned and the concerned investor can seek and provide clarification(s) online to each other;
- The life cycle of a complaint has an audit trail; and

- All the complaints are saved in a central database which would generate relevant MIS reports to enable SEBI to take appropriate policy decisions and or remedial actions.

SCORES would expedite disposal of investors' complaints as this would obviate the need for physical movement of complaints and the possibility of loss, damage or misdirection of the complaints would be avoided. It would facilitate easy retrieval and tracking of complaints at any time.

REPLACED/REPEALED REGULATIONS

SEBI (Foreign Portfolio Investors) Regulations, 2014 (FPI Regulations) has now REPLACED SEBI (Foreign Institutional Investors) Regulations, 1995. Thus, FII regulations are now not in existence.

The objective of new regulation is to simplify compliance requirements and have uniform guidelines for various categories of Foreign Portfolio Investors (FPI). The new regulation provides framework for Foreign Portfolio Investors (FPP) and Designated Depository Participant (DDP).

Designated Depository Participants are authorised to grant registration to FPI on behalf of the SEBI. The application for grant of registration is to be made to DDP in a prescribed form alongwith the specified fees.

CATEGORIES OF FPI:

CATEGORY I:

Includes:

Government and Government related investors, international and multilateral organisation

CATEGORY II:

Includes: Funds, Trusts, AMC, Portfolio Managers, University funds.

CATEGORY III:

Includes:

All other FPI which are not eligible under Category I & II. Such as charitable trusts, charitable societies, individuals.

There may be **Any other Category** as may be specified by SEBI from time to time.

SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014 HAS NOW REPLACED SEBI (ESOP & ESPS) SCHEMES.

(However, the existing schemes have been given a transition time of 1 year)

APPLICABILITY:

The provisions of these regulations shall apply to the following :

i. Employee Stock Options Scheme
ii. Employee Stock Purchase Scheme
iii. Stock Appreciation Rights Scheme
iv. General Employee Benefit Scheme and
v. Retirement Benefit Scheme

The provisions of these scheme shall apply to any company whose shares are listed on a recognised stock exchange in India and the provisions are not applicable if shares are allotted to employees on preferential basis under SEBI (ICDR) Regulations.

THE DEPOSITORIES RECEIPT SCHEME, 2014 HAS REPLACED ISSUE OF FCCB & ORDINARY SHARES (THROUGH DEPOSITORIES RECEIPT MECHANISM) SCHEME, 1993.

However, for FCCB, the old scheme of 1993 will continue to remain applicable. The 2014 scheme is based on the recommendations of M.S. Sahoo Committee.

CLAUSE 3 OF THE 2014 SCHEME:

It describes the eligibility of issue of Depository Receipts. The following persons are eligible to issue or transfer permissible transactions to a foreign depository for the issue of depository receipts

- Any Indian company, listed or unlisted, private or public.
- Any other issuer of permissible securities
- Any person holding permissible securities

which has not been specifically prohibited from accessing or dealing in capital market.

Under 2014 scheme, the companies will be allowed to issue DR in all kinds of permissible securities including shares, debentures, bonds, derivatives, Collective Investment Scheme, Units of Mutual Funds.

OVERSEAS INVESTMENT BY REGISTERED TRUST/ SOCIETY

Criteria for overseas investment by Registered Trust/Society

TRUST

i. The Trust should be registered under the Indian Trust Act, 1882.
ii. The Trust deed permits the proposed investment overseas.
iii. The proposed investment should be approved by the trustee/s.
iv. The Authorised Dealer bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bonafide activity.
v. The Trust has been in existence at least for a period of three years.
vi. The Trust has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.

SOCIETY

i. The Society should be registered under the Societies Registration Act, 1860.
ii. The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body / council or a managing / executive committee.
iii. The Authorised Dealer bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a bonafide activity.
iv. The Society has been in existence at least for a period of three years.
v. The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.

In addition to the registration, the activities which, require special license / permission either from the Ministry of Home Affairs, Government of India or from the relevant local authority, as the case may be, the Authorised Dealer Category — I bank should ensure that such special license /permission has been obtained by the applicant.

FEW IMPORTANT TERMS (FEMA)

FINANCIAL COLLABORATION AND TECHNICAL COLLABORATION:

Financial collaboration involves FDI in the form of equity and such other source.

Technological collaboration involves transfer of technology and payment of royalty, technical know how fees or any such technical collaborations.

FDI can come under automatic route for such collaboration as long as it is within the limits otherwise such FDI will come under Approval route and prior approval will be required.

LIAISON OFFICE AND PROJECT OFFICE

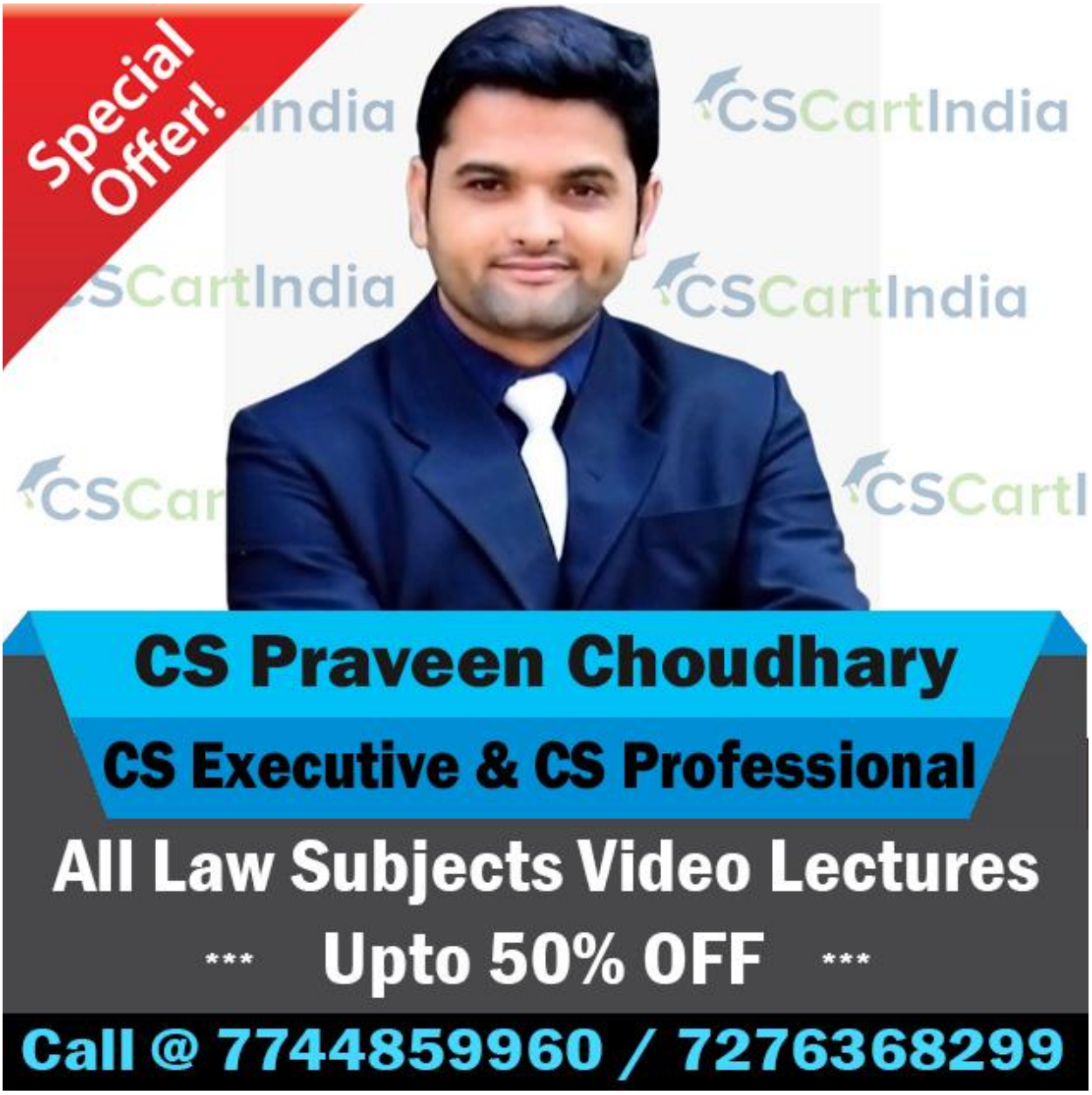
Liaison office acts as a channel of communication between the principal place of business and the Indian activities. The role of such office is limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian Customers. Approval for establishing the Liaison office is granted by RBI.

In case of Project Office, general permission is granted by RBI subject to certain conditions. Such offices can not undertake or carry on any activity other than the activity incidental or relating to the execution of the project.

PAYMENT OF ROYALTY BY INDIAN COMPANIES

Indian Companies are allowed to make the payment for royalty under the foreign technology collaboration agreement under automatic route subject to the following limits:

i. The lumpsum payment does not exceed US $ 2 Million.
ii. Royalty payable is being to 5 % for domestic sales and 8 % for exports.
iii. Payment of royalty for use of trademarks and brand name of the foreign collaborator is allowed up-to 1 % for domestic sales and 2 % for exports.



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NATIONAL COMPANY LAW TRIBUNAL

The MCA has issued notification for constitution of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) with effect from 1st June, 2016.

Chairperson (NCLAT)	Hon'ble Justice S.J. Mukhopadhaya, Judge (Retd)., Supreme Court of India
President (NCLT)	Hon'ble Justice M.M. Kumar, Judge (Retd).

Company Law Board (CLB) stands dissolved w.e.f. 1st June, 2016.

BENCHES OF NCLT:

NCLT have 11 Benches, as per list given below –

NO. OF BENCHES	PLACE
2	New Delhi
1	Chennai
1	Kolkata
1	Mumbai
1	Guwhati
1	Hyderabad
1	Ahmedabad
1	Allahabad
1	Bengaluru
1	Chandigarh

NCLT can be considered as biggest Tribunal till date because NCLT will CONSOLIDATE the corporate jurisdiction of the followings:

1. Company Law Board/ BIFR/ AAIFR
2. Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High courts.

Advantages of NCLT & NCLAT:

1. It shall avoid multiplicity of litigation before various Forums (High Courts, CLB, BIFR, AAIFR).
2. There shall be at least 11 benches of the NCLT, thereby providing justice almost at one's doorstep.
3. The tribunal shall comprise of technical experts who will provide more concrete and precise decision.
4. There will be mixture of judicial and equitable jurisdiction while deciding matters.
5. There shall be reduction in period of winding up from 20-25 years to 2 years.

SOME MAJOR CHANGES AFTER CONSTITUTION OF NCLT/ NCLAT

Winding up:

The NCLT has also been empowered to pass an order for winding up of a company. Therefore, Practicing Company Secretaries may represent the winding up case before the NCLT.

Compromise and Arrangement:

With the establishment of NCLT, a whole new area of practice will open up for PCS with respect to advising and assisting corporate section on merger, amalgamation, demerger, reverse merger, compromise and other arrangements right from the conceptual to implementation level. PCS will be able to render services in preparing schemes, appearing before NCLT/ NCLAT for approval of schemes and post-merger formalities.

Sec 408 TO Sec 433 DEALS WITH ADMINISTRATION OF NCLT AND NCLAT

408 Constitution of (NCLT)
409 Qualification: (President/ Member of NCLT)
410 Constitution of appellate tribunal
411 Qualification: (Chairman/ Member of NCLAT)
412 Selection of Members
413 term of office of president, chairperson and other members
414 salary and allowances
415 Acting President and Chairperson of Tribunal or Appellate Tribunal
416 Resignation of Members
417 Removal of Members
418 Staff of Tribunal and Appellate Tribunal
419 Benches of Tribunal
420 Orders of Tribunal
421 Appeal from Orders of Tribunal
422 Expeditious disposal by Tribunal and Appellate Tribunal
423 Appeal to Supreme Court
424 Procedure before Tribunal and Appellate Tribunal
425 Power to punish for contempt
426 Delegation of powers
427 President, Members, Officers, etc., to be public servants
428 Protection of action taken in good faith
429 Power to seek assistance of Chief Metropolitan Magistrate, etc.
430 Civil court not to have jurisdiction
431 Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings
432 Right to legal representation
433 Limitation

CONSTITUTION OF NCLT (Sec 408)

The Central Government shall, by notification, constitute, with effect from (1 JUNE 2016) a Tribunal to be known as the NCLT consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

Qualification: (President/ Member of NCLT) (Sec 409)

Sr.	President	Judicial Member	Technical Member
1.	Is/has been Judge of High Court ≥ 5 years	Is/has been Judge of High Court (any period)	Has Member of Indian Corporate Law Service/ Indian Legal Service ≥ 15 years (and has been holding the rank of secretary or additional secretary to government of India)
2.		Is/has been District Judge at least 5 years	Is/has been Practicing Chartered Accountant at least 15 years
3.		Has been Advocate of court OR held a judicial office or as member of a tribunal at least 10 years	Is/has been Practicing Cost Accountant at least 15 years
4.			Is/has been PCS for least 15 years
5.			Person with proven ability, integrity and standing having special knowledge and experience ≥ 15 years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.
6.			Presiding Officer of Labour Court/ Tribunal/ National Tribunal (under Industrial Disputes Act, 1947) at least 5 years

CONSTITUTION OF APPELLATE TRIBUNAL (Sec 410)

The Central Government shall, by notification, constitute with effect from such date (1 JUNE 2016) an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal.

Qualification of Chairman/ Member of NCLAT (Sec 411)

NCLAT, constituting of a Chairperson and not exceeding 11 members for hearing appeals against the orders of the NCLT.

S. No.	Chairman	Judicial Member	Technical Member
1.	Is/has been Judge of Supreme Court	Is/has been Judge of High Court	Person with proven ability, integrity and standing having special knowledge and experience ≥ 25 years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.
2.	Is/has been Chief Justice of High Court	Is a Judicial Member of Tribunal for at least 5 years	

Selection of Members (SEC 412)

S. No.	President/ Chairman	Judicial Member of the Appellate Tribunal	Members of the Tribunal and the Technical Members of the Appellate Tribunal
1.	Shall be Appointed after consultation with the Chief Justice of India.	Shall be Appointed after consultation with the Chief Justice of India.	Shall be appointed on the recommendation of a Selection Committee.

TERM OF OFFICE OF PRESIDENT, CHAIRPERSON AND OTHER MEMBERS (Sec 413)

TERM OF OFFICE OF PRESIDENT, CHAIRPERSON AND OTHER MEMBERS	
TERM OF PRESIDENT AND OTHER MEMBERS NCLT	**TERM OF CHAIRPERSON AND OTHER MEMBERS NCLAT**
The President and every other Member of the Tribunal shall hold office as such for a term of 5 years AND shall be eligible for reappointment for another term of 5 years.	The chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of 5 years AND shall be eligible for re-appointment for another term of 5 years.
TIME OF VACATION OF OFFICE	**TIME OF VACATION OF OFFICE**
a) For President, the age of 67 years b) For other Member, the age of 65 years	a) For Chairperson, the age of 70 years; b) For other Member, the age of 67 years
Provided that a person who has not completed 50 years of age shall not be eligible for appointment as Member.	Provided that a person who has not completed 50 years of age shall not be eligible for appointment as Member:

SALARY, ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OR MEMBERS (Sec 414)

The salary, allowances and other terms and conditions of service of the Members of the NCLT and the NCLAT shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to their disadvantage after their appointment.

ACTING PRESIDENT AND CHAIRPERSON OF NCLT OR NCLAT (Sec 415)

1. In the event of the occurrence of any vacancy in the office of the President or the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the President or the Chairperson, as the case may be, until the date on which a new President or Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

2. When the President or the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the President or the Chairperson, as the case may be, until the date on which the President or the Chairperson resumes his duties.

RESIGNATION OF MEMBERS (Sec 416)

The President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office:

Provided that the President, the Chairperson, or the Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

REMOVAL OF MEMBERS (Sec 417)

1. The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who

a. has been adjudged an insolvent; or
b. has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
c. has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or
d. has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or
e. has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.

STAFF OF TRIBUNAL AND APPELLATE TRIBUNAL SECTION 418

1. The Central Government shall, in consultation with the NCLT and the NCLAT, provide the NCLT and the NCLAT, as the case may be, with such officers and other employees as may be necessary for the exercise of the powers and discharge of the functions of the NCLT and NCLAT.

2. The officers and other employees of the NCLT and the NCLAT shall discharge their functions under the general superintendence and control of the President, or as the case may be, the Chairperson, or any other Member to whom powers for exercising such superintendence and control are delegated by him.

BENCHES OF TRIBUNAL SECTION 419

1. There shall be constituted such number of Benches of the NCLT, as may, by notification, be specified by the Central Government.

2. The Principal Bench of the NCLT shall be at New Delhi which shall be presided over by the President of the NCLT.

3. The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member.

4. The Central Government shall, by notification, establish such number of benches of the NCLT, as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such NCLT by or under Part II of the IBC, 2016.

ORDERS OF TRIBUNAL SECTION 420

1. The NCLT may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.
2. The NCLT may, at any time within 2 years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties.
   Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.
3. The NCLT shall send a copy of every order passed under this section to all the parties concerned.

APPEAL FROM ORDERS OF TRIBUNAL (Sec 421)

1. Any person aggrieved by an order of the NCLT may prefer an appeal to the NCLAT.
2. No appeal shall lie to the NCLAT from an order made by the NCLT with the consent of parties.
3. Every such appeal shall be filed within 45 days from the date on which a copy of the order of the NCLT is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the NCLT may entertain an appeal after the expiry of 45 days from the date aforesaid, but within a further period not exceeding 45 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

4. On the receipt of an appeal, the NCLAT shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
5. The NCLAT shall send a copy of every order made by it to the NCLT and the parties to appeal.

EXPEDITIOUS DISPOSAL BY NCLT AND NCLAT (Sec 422)

1. Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavor shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

2. Where any application or petition or appeal is not disposed of within the period specified in sub-section (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding ninety days as he may consider necessary.

APPEAL TO SUPREME COURT (Sec 423)

Any person aggrieved by any order of the NCLAT may file an appeal to the Supreme Court **within 60 days** from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

PROCEDURE BEFORE TRIBUNAL AND APPELLATE TRIBUNAL (Sec 424)

The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice or of the Insolvency and Bankruptcy Code, 2016, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act or under the Insolvency and Bankruptcy Code, 2016, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely

- Summoning and enforcing the attendance of any person and examining him on oath

- Requiring the discovery and production of documents; (c) receiving evidence on affidavits
- Subject to the provisions of sec 123 & 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office
- Issuing commissions for the examination of witnesses or documents; (f) dismissing a representation for default or deciding it ex parte
- Setting aside any order of dismissal of any representation for default or any order passed by it ex parte
- Any other matter which may be prescribed

Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein

POWER TO PUNISH FOR CONTEMPT (Sec 425)

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effects subject to modifications that –

a. The reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and
b. The reference to Advocate – General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

DELEGATION OF POWERS (Sec 426)

The Tribunal or the Appellate Tribunal may, by general or special order, direct, subject to such conditions, if any, as may be specified in the order, any of its officers or employees or any other person authorized by it to inquire into any matter connected with any proceeding or, as the case may be, appeal before it and to report to it in such manner as may be specified in the order.

MEMBERS, OFFICERS, ETC., TO BE PUBLIC SERVANTS (Sec 427)

The President, Members, officers and other employees of the Tribunal and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

PROTECTION OF ACTION TAKEN IN GOOD FAITH (Sec 428)

No suit, prosecution or other legal proceeding shall lie against the Tribunal, the President, Member, officer or other employee, or against the Appellate Tribunal, the Chairperson, Member, officer or other employees thereof or liquidator or any other person authorized by the Tribunal or the Appellate Tribunal for the discharge of any function under this Act in respect of any loss or damage caused or

likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.

POWER TO SEEK ASSISTANCE OF CHIEF METROPOLITAN MAGISTRATE, ETC. (Sec 429)

The Tribunal may, in any proceedings for winding up of a company under this Act or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall on such request being made to him.

a) Take possession of such property, books of account or other documents
b) Cause the same to be entrusted to the Tribunal or other person authorized by it.

CIVIL COURT NOT TO HAVE JURISDICTION (Sec 430)

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

VACANCY IN TRIBUNAL OR APPELLATE TRIBUNAL NOT TO INVALIDATE ACTS OR PROCEEDINGS (Sec 431)

No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be

RIGHT TO LEGAL REPRESENTATION (Sec 432)

A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorities one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be

LIMITATION

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be

TRANSFER OF CERTAIN PENDING PROCEEDINGS (Sec 434)

On such date as may be notified (1 JUNE 2016) by the Central Government in this behalf

- All matters, proceedings or cases pending before the Company Law Board shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act
- All proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.
- Any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated:
- Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act. No fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this clause.

COMPOUNDING OF OFFENCE (Sec 441)

Three kinds of offences are permitted to be compounded under this section: -

a) An offence is punishable with fine only

b) An offence is punishable with imprisonment or fine

c) An offence which is punishable with imprisonment or fine or with both imprisonments

SPECIAL POINTS

1. An offence punishable with imprisonment only or with imprisonment and fine is not compoundable under this section.
2. The section empowers the NCLT to compound offences without any limit or where a maximum amount of fine which may be imposed by an offence does not exceed Rs. 5,00,000 it may be compounded by the Regional Director.
3. Any offence covered under this section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.
4. The offences committed by a company or its officer within a period of three years from the date on which the similar offence was committed by it or him was compounded under this section, are not compoundable.
5. Every application for the compounding of an offence shall be made to the Registrar of Companies who shall forward the same, together with its comments thereon, to the Company Law Board or the Regional Director, as the case may be. Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by

the Company, to the Registrar of Companies, within 7 days from the date on which the offence is so compounded.

6. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorized by the Central Government against the offender in relation to whom the offence is so compounded.
7. Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.
8. Any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;
9. Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

DISSOLUTION OF COMPANY LAW BOARD AND CONSEQUENTIAL PROVISIONS (Sec 466)

Notwithstanding anything contained in section 465, Company Law Board shall stand dissolved on the constitution of the Tribunal and the Appellate Tribunal:

CLASS – ACTION SECTION 245 (not for banking company)

Against whom a Class Action Suit can be filed? Section 245 (1)

Class action suit can be filed against the

- Company,
- Any of its directors,
- Auditor, including audit firm
- Expert or advisor or consultant or any other person

Where Class Action Suit can be filed?

Before NCLT

WHAT KIND OF ORDER NCLT CAN GIVE ON CLASS ACTION SUIT?

a) To restrain the company from committing an act which is ultra vires the AOA or MOA of the company;

b) To restrain the company from committing breach of any provision of the company's MOA or AOA;

c) To declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;

d) To restrain the company and its directors from acting on such resolution;

e) To restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
f) To restrain the company from taking action contrary to any resolution passed by the members;
g) To claim damages or compensation or demand any other suitable action from or against –

i. the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
ii. the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
iii. any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

h) To seek any other remedy as the Tribunal may deem fit.

2) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

WHO CAN FILE APPLICATION UNDER SECTION 245 SECTION 245(3)

S. No.	Type of Company	Members	Depositors
1.	In the case of a company having a share capital	Not less than 100 members of the company or not less than 10% of the total number of its members whichever is less, or any member or members holding not less than 10% of the issued share capital of the company.	Shall not be less than 100 depositors or not less than 10% of the total number of depositors whichever is less, or any depositor or depositors to whom the company owes 10% of total deposits of the company.
2.	In the case of a company not having a share capital,	Not less than 1/5th of the total number of its members.	Shall not be less than 100 depositors or not less than 10% of the total number of depositors whichever is less, or any depositor or depositors to whom the company owes 10% of total deposits of the company

4. In considering an application, the Tribunal shall take into account, in particular –

- ✓ Whether the member or depositor is acting in good faith in making the application for seeking an order

- ✓ Any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded;

5. If an application filed is admitted, then the Tribunal shall have regard to the following, namely:
   a) Public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;
   b) all similar applicants prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;
   c) Two class action applications for the same clause of action shall not be allowed;
   d) The cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.

6. Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.
7. Any company which fails to comply with an order passed by the Tribunal under this section 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 imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
8. Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

NCLT RULES 2016

RULE 84 Right to apply u/s 245

1. An application under section 245(1), read with section 245(3) of the Act, shall be filled in Form NCLT-9.
2. A copy of every application shall be served on the company, other respondents and all such persons as the Tribunal may direct.

RULE 85: Conducting a class action suit

1. Without prejudice to the generality of the provisions of section 245(4) of the Act, the Tribunal may, while considering the admissibility of an application under the said section, in addition to the grounds specified therein, take into account the following:
   a. whether the class has so many members that joining them individually would be impractical, making a class action desirable;
   b. whether there are questions of law or fact common to the class;

c. whether the claims or defenses of the representative parties are typical of the claims or defenses of the class;
d. whether the representative parties will fairly and adequately protect the interests of the class.

RULE 86: Rule of opt-out

1. A member of a class action u/s 245 of the Act is entitled to opt-out of the proceedings at any time after the institution of the class action, with the permission of the Tribunal, as per Form No. NCLT-1.
2. A class member opting out shall not be precluded from pursuing a claim against the company on an individual basis under any other law, where a remedy may be available, subject to any conditions imposed by the Tribunal.

RULE 87: Publication of notice

1. For the purposes of section 245(5)(a) of the Act, on the admission of an application filed u/s 245(1) of the Act, a public notice shall be issued by the Tribunal as per Form No. NCLT-13 to all the members of the class by –

- publishing the same within seven days of admission of the Application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;
- requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper.

Provided that such notice shall also be placed on the websites of the Tribunal and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by the Tribunal.

3. The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.

NCLT AND NCLAT RULES 2016

NCLT RULES 2016 (W.E.F. 21ST JULY, 2016)

RULE 2 Definitions

S. No.	PARTICULARS	PROVISIONS
1.	Act	means the Companies Act, 2013
2	Applicant	Means a petitioner or an appellant or any other person or entity capable of making an application including an interlocutory application or a petition or an appeal under the Act;
3	Application	means any application or proceedings filed under the provisions of the Act, including any transferred application or transferred petition as defined under sub-rule (29);
4	Authorized representative	means a person authorized in writing by a party to present his case before the NCLT as the representative of such party as provided u/s 432 of the Act;
5	Central Registry	"means the registry in which all the applications or petitions and documents are received by the ROC for allocation to the concerned Bench of the NCLT for disposal;
6	Creditor	means any person to whom a debt is owed;
7	Filer	means an authorized representative of that person or any party to the proceedings who files any document with the NCLT in relation to a case filed under the Act, or any rules thereunder;
8	Filed	means filed in the office of the Registry of the NCLT;

S. No.	PARTICULARS	PROVISIONS
RULE 3	Computation of time period.	Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Tribunal for doing any act, in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Tribunal is closed, that day and any succeeding days on which the Tribunal remains closed shall also be excluded.
RULE 9	Sitting hours	The sitting hours of the Tribunal shall ordinarily be from 10:30 AM to 1:00 PM and 2:00 P.M. to 4:30 P.M, subject to any order made by the President.
RULE 10	Working hours	(1) Except on Saturdays, Sundays and other National Holiday, the office of the Tribunal shall remain open on all working days from 09:30 A.M. to 6:00 P.M. (2) The Filing Counter of the Registry shall be open on all

		working days from 10.30 AM to 5.00 P.M
RULE 11	Listing of cases	An urgent matter filed before 12 noon shall be listed before the Tribunal on the following working day, if it is complete in all respects as provided in these rules and in exceptional cases, it may be received after 12 noon but before 3:00 P.M. for listing on the following day, with the specific permission of the Bench.
RULE 16	Functions of the President	preside over the consideration of cases by the Tribunal; direct the Registry in the performance of its functions; prepare an annual report on the activities of the Tribunal; transfer any case from one Bench to other Bench when the circumstances so warrant; to withdraw the work or case from the court of a member. perform the functions entrusted to the President under these rules and such other powers as may be relevant to carry out his duties as head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members, ROC, Secretary and other staff of the Tribunal.
RULE 17	Functions of the Registrar	The ROC shall have the following functions, namely: - ✓ Registration of appeals, petitions and applications; ✓ Receive applications for amendment of appeal or the petition or application or subsequent proceedings. ✓ Receive applications for fresh summons or notices and regarding services thereof; ✓ Receive applications for fresh summons or notices and for short date summons and notices; ✓ Receive applications for substituted service of summons or notices; ✓ Receive applications for seeking orders concerning the admission and inspection of documents; ✓ Transmission of a direction or order to the civil court as directed by Tribunal with the prescribed certificates for execution etc., and ✓ Such other incidental or matters as the President may direct from time to time.
RULE 18	Functions of the Secretary	a) be in charge of the long term projects and initiatives of the Tribunal; b) supervise the divisions and sections of the Human Resources; c) prepare, monitor and manage budgetary allocations and financial managements of the Tribunal and the Benches; d) provide all necessary support in the day to day operations of

		the Tribunal; e) manage and supervise the facilities and administrative services of the Tribunal; manage and administer the public grievances mechanism of the Tribunal; coordinate with authorized representatives and other professionals in the smooth functioning of the Tribunal; oversee information and communication technology and other technology facilities in the Tribunal; manage and facilitate communication and services of the Tribunal; manage, monitor and administer the public affairs and public safety provisions within the premises of the Tribunal; and supervise library and research wings of the Tribunal.
RULE 20	Procedure	1. Every appeal or petition or application or caveat petition or objection or counter presented to the Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper form; 2. The cause title shall state "Before the National Company Law Tribunal" and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred. 3. Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point. 4. Where Saka or other dates are used, corresponding dates of Gregorian calendar shall also be given. 5. Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application. 6. The names of parties shall be numbered consecutively and a

		separate line should be allotted to the name and description of each party. 7. These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers. 8. Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in. 9. Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.
RULE 34	General Procedure	1. In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice. 2. The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in Form No. NCLT. 4. 3. Every petition or application or reference shall be filed in form as provided in Form No. NCLT. 1 with attachments thereto accompanied by Form No. NCLT. 2 and in case of an interlocutory application, the same shall be filed in Form No. NCLT. 1 accompanied by such attachments thereto along with Form No. NCLT.3 4. Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT. 6. Notice to be issued by the Tribunal to the opposite party shall be in Form NCLT-5.
RULE 35	Advertisement detailing petition	1. Where any application, petition or reference is required to be advertised, it shall, unless the Tribunal otherwise orders, or these rules otherwise provide, be advertised in Form NCLT-3A, not less than 14 days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situate, and at least once in English language in an English newspaper circulating in that district. 2. such advertisement shall state :- a) the date on which the application, petition or reference was presented; b) the name and address of the applicant, petitioner and his authorized representative, if any; c) the nature and substance of application, petition or reference;

		d) the date fixed for hearing; e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition or reference at the hearing shall send a notice of his intention to the concerned Bench and the petitioner or his authorized representative, if any, indicating the nature of interest and grounds of opposition so as to reach him not later than two days previous to the day fixed for hearing. 3. Where the advertisement is being given by the company, then the same may also be placed on the website of the company, if any. 4. An affidavit shall be filed to the Tribunal, not less than three days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served: Provided that the affidavit shall be accompanied with such proof of advertisement or of the service, as may be available. 5. Where the requirements of this rule or the direction of the Tribunal, as regards the advertisement and service of petition, are not complied with, the Tribunal may either dismiss the petition or give such further directions as it thinks fit. 6. The Tribunal may, if it thinks fit, and upon on application being made by the party, may dispense with any advertisement required to be published under this rule.
RULE 37	Notice to Opposite Party	1. The Tribunal shall issue notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the Notice. Such notice in Form No. NCLT.5 shall be accompanied by a copy of the application with supporting documents. 2. If the respondent does not appear on the date specified in the notice in Form No. NCLT.5, the Tribunal, after according reasonable opportunity to the respondent, shall forthwith proceed ex-parte to dispose of the application. If the respondent contests to the notice received under sub-rule (1), it may, either in person or through an authorized representative, file a reply accompanied with an affidavit and along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the Registry

		before the date of hearing and such reply and copies of documents shall form part of the record.

NCLAT RULES 2016
w.e.f - 21st July 2016

PARTICULARS	PROVISIONS
RULE 3 Computation of time period	Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Appellate Tribunal for doing any act, in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Appellate Tribunal is closed, that day and any succeeding day on which the Appellate Tribunal remains closed shall also be excluded
RULE 9 Sitting hours of the Appellate Tribunal	The sitting hours of the Appellate Tribunal shall ordinarily be from 09.30AM to 01.00 PM. And from 2.15 PM to 5.00 PM. subject to any order made by the Chairperson and this shall not prevent the Appellate Tribunal to extend its sitting as it deems fit.
RULE 10 Working hours of office	1. The office of the Appellate Tribunal shall remain open on all working days from 9:30 A.M. to 6:00 P.M. 2. The filing counter of the Registry shall be open an all working days from 10.30 AM to 5.00 PM.
RULE 13 Listing of cases	All urgent matters filed before 12 noon shall be listed before the Appellate Tribunal on the following working day, if it is complete in all respects as provided in these rules and in exceptional cases, it may be received after 12 noon but before 3.00 PM. for listing on the following day, with the specific permission of the Appellate Tribunal or Chairperson.
RULE 14 Power to exempt	The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.
RULE 15 Power to extend time	The Appellate Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.
RULE 17 Power of adjournment	All adjournments shall normally be sought before the concerned Bench in court and in extraordinary circumstances, the Registrar may, if so directed by the Tribunal in chambers, at any time

	adjourn any matter and lay the same before the Tribunal in chambers.
RULE 18 Delegation powers of the Chairperson	The chairperson may assign or delegate to a Deputy Registrar or to any other suitable officer all or some of the functions required by these rules to be exercised by the Registrar
RULE 19 Procedure of proceedings	1. Every appeal to the Appellate Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type-written or printed in double spacing on one side of standard paper with an inner margin of about four centimeters width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form. 2. The cause title shall state "In the National Company Law Appellate Tribunal" and also set out the proceedings or order of the authority against which it is preferred. 3. Appeal shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point. 4. Where Saka or other dates are used, corresponding dates of Gregorian calendar shall also be given. 5. Full name, parentage, description of each party and address and in case a party sue or being sued in a representative character, shall also be set out at the beginning of the appeal and need not be repeated in the subsequent proceedings in the same appeal. 6. The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party and these numbers shall not be changed and in the event of the death of a party during the pendency of the appeal, his legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers. 7. Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in. 8. Every proceeding shall state immediately after the cause title and the provision of law under which it is preferred.
RULE 22 Presentation of appeal	1. Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorized representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

	2. Every appeal shall be accompanied by a certified copy of the impugned order. 3. All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon. 4. Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed. 5. In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorized representative. 6. The processing fee prescribed by the rules, with required number of envelops of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.
RULE 23 Number of copies to be filed	The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.