

Chapter 11 – CORPORATE GOVERNANCE

System by which companies are directed and governed by the management in the best interests of the stakeholders and others ensuring better management, greater transparency and timely financial reporting.

Audit Committee (A.C.) u/s 177 of Companies Act, 2013

SEBI (LODR) Regulations, 2015

Section	Details								
177(1)	Companies required to constitute A.C.: Listed Public Companies & other prescribed (Public) companies: (i) companies with a paid-up capital of \geq 10 Cr.; (ii) companies having turnover \geq Rs. 100 Cr.; (iii) companies, having in aggregate, outstanding loans or borrowings or debentures or deposits > 50 Cr.								
177(2)	<ul style="list-style-type: none"> Composition - Minimum 3 directors; majority independent directors. Majority Members with Chairperson-ability to read & understand, F.S. 								
177(4)	Functions of Audit Committee include: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">1. Recommendation-Appointment, Remuneration & terms of auditors;</td> <td style="width: 50%; padding: 2px;">5. Scrutiny of inter-corporate loans and investments;</td> </tr> <tr> <td style="padding: 2px;">2. Review & monitor auditor's independence & audit effectiveness;</td> <td style="padding: 2px;">6. Valuation of undertakings/assets, wherever it is necessary;</td> </tr> <tr> <td style="padding: 2px;">3. Examination of F.S. & auditors' report thereon;</td> <td style="padding: 2px;">7. Evaluation of IFC and risk management systems;</td> </tr> <tr> <td style="padding: 2px;">4. Approval/Modification of transactions with related parties;</td> <td style="padding: 2px;">8. Monitoring end use of funds raised through public offers.</td> </tr> </table>	1. Recommendation-Appointment, Remuneration & terms of auditors;	5. Scrutiny of inter-corporate loans and investments;	2. Review & monitor auditor's independence & audit effectiveness;	6. Valuation of undertakings/assets, wherever it is necessary;	3. Examination of F.S. & auditors' report thereon;	7. Evaluation of IFC and risk management systems;	4. Approval/Modification of transactions with related parties;	8. Monitoring end use of funds raised through public offers.
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177(5)	The Audit Committee may: <ul style="list-style-type: none"> call for the comments of the auditors about IC systems, the scope of audit, including the observations, and review of F.S. before their submission to the Board and may discuss any related issues-internal & statutory auditors. 								
177(6)	<ul style="list-style-type: none"> Investigate any matter specified u/s. 177(4) or referred to it by Board. Power-to obtain professional advice from external sources & full access to info contained in the records of the company. 								
177(7)	Auditors and KMP - Right to be heard in meetings of A.C. when it considers auditor's report but shall not have the right to vote.								
177(8)	<ul style="list-style-type: none"> Board's report shall disclose the composition of A.C. and Where the Board had not accepted recommendation of A.C., it shall be disclosed in report along with the reasons therefor. 								
177(9)	Vigil Mechanism								
177(10)									

- (a) Board of Director including its composition, independent director, non-executive director etc.;
- (b) Provisions regarding composition and functioning of Audit Committee (Regulation 18).
- (c) Provisions regarding setting up and role of Nomination and Remuneration Committee.
- (d) Provisions regarding setting up and role of Stakeholder Relationship Committee
- (e) Provisions regarding setting up and role of Risk Management Committee
- (f) Vigil mechanism
- (g) Related party Transaction
- (h) Management of Subsidiaries
- (i) Obligations w.r.t. Independent Directors
- (j) Obligations w.r.t. directors and senior management
- (k) Others as specified in Part E of schedule II (Discretionary).

(SEBI (LODR) Regulations, 2015)

AUDIT COMMITTEE (A.C.) – Requirements, Meetings, Powers and Role

Requirements of Audit Committee

1. A.C. - Minimum 3 directors. 2/3 shall be independent directors.
2. All members shall be financially literate & at least one member shall have accounting/related financial management expertise.
3. Chairman of the A.C. shall be an independent director.
4. Chairman of A.C. shall be present at AGM to answer shareholder queries.
5. A.C. at its discretion shall invite finance director or head of finance function, head of internal audit & representative of statutory auditor & such other executives, to be present at meetings of A.C.
6. Company Secretary shall act as the secretary to the committee.

Meetings of Audit Committee:

- At least 4 & gap between 2 meetings - not more than 4 months.
- Quorum-Greater of 2 or 1/3 - minimum 2 independent members.

Powers of audit Committee:

- To investigate any activity within its terms of reference.
- To seek information from any employee.
- To obtain outside legal or other professional advice.
- To secure attendance of outsiders with relevant expertise.

Mandatory review Area:

- Management discussion & analysis of financial conditions and results of operations.
- Statement of significant related party transactions.
- Letters of IC weaknesses issued by the statutory auditors.
- Internal audit reports to internal control weaknesses; and
- Appointment, removal & remuneration of the Chief Internal Auditor.
- Statement of deviations on (a) quarterly statement of deviation including report of monitoring agencies submitted to stock exchange (b) annual statement of funds utilized for purposed other than those stated in offer document.

Role of Audit Committee w.r.t. review of financial statements

Audit committee is required to review with management the annual financial statements before submission to the Board, focusing primarily on:

- (a) Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of Sec. 134(3)(c) of the Companies Act, 2013.
- (b) Changes, if any, in accounting policies and practices and reasons for the same
- (c) Major accounting entries involving estimates based on the exercise of judgment by management
- (d) Significant adjustments made in the financial statements arising out of audit findings
- (e) Compliance with listing and other legal requirements relating to F.S.
- (f) Disclosure of any related party transactions
- (g) Qualifications in draft audit report

Role of Auditor in Audit Committee

1 Auditor's Role

- To ensure that auditor communicates frequently with the A.C. on key accounting or auditing issues that, in his judgment, give rise to a greater risk of material misstatement of the financial statements.
- To ensure that he addresses any questions or concerns voiced by A.C.
- To assist and advise the A.C. on improving corporate governance, oversight of financial reporting process, implementation of accounting policies and practices, compliance with ASs, strengthening of the internal control systems in regard to financial reporting and reporting processes.
- To assist the management and A.C. to enable them to discharge their functions effectively and in certification of the requirements of corporate governance.

2 Auditor's responsibilities

- Auditor's responsibility in certifying compliance with the requirements of corporate governance relates to the verification and certification of factual implementation of requirements of corporate governance as stipulated in the SEBI (LODR) Regulations, 2015.
- Such verification and certification is neither an audit nor an expression of opinion.
- Certificate from the auditor as regards compliance with the requirements of corporate governance is neither an assurance as to the future viability of the company, nor the efficiency or effectiveness with which the management has conducted the affairs of the company.

3 Auditor's Procedures

- Auditor should conduct verification of compliance with the requirements of corporate governance as stipulated in the SEBI (LODR) Regulations, in accordance with the Guidance Note on Certification of Corporate Governance issued by ICAI.
- The SAs would be applicable in the performance of certification with the requirements of corporate governance by the auditor, to the extent relevant.
- The auditor should document matters, which are important in providing evidence to support the certificate of factual findings, in accordance with SA 230 on "Audit Documentation".
- The auditor should consider obtaining management representations in accordance with SA 580, "Written Representations".

(SEBI (LODR) Regulations, 2015)

Board of Directors – Composition and Remuneration

Composition of Board of Directors (BOD)

- BOD shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than 50% of the BOD comprising non-executive directors.

Provided that the BOD of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the BOD of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020.

- Where the Chairperson of the Board is a non-executive director, at least 1/3rd of the Board should comprise independent directors and in case the company does not have a regular non-executive Chairman, at least half of the Board should comprise independent directors.
- The BOD of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than 6 directors.*
- No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of 75 years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.*

Remuneration of BOD

- BOD shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.
- Requirement of obtaining approval of shareholders shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed.
- The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds 50% of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.*
- Independent directors shall not be entitled to any stock option.
- Fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-*
 - the annual remuneration payable to such executive director exceeds ₹ 5 crore or 2.5% of the net profits of the listed entity, whichever is higher; or*
 - where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5% of the net profits of the listed entity;*

Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.

Obligations of Directors and Senior management

1 Meetings of the BOD

- The Board shall meet at least 4 times a year, with a maximum time gap of 120 days between any two meetings.
- The quorum for every meeting of the BOD of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be 1/3rd of its total strength or 3 directors, whichever is higher, including at least one independent director.*

2 Maximum Number of Directorships

- A person shall not be a director in more than 8 listed entities with effect from April 1, 2019 and in not more than 7 listed entities with effect from April 1, 2020:*

Provided that a person shall not serve as an independent director in more than 7 listed entities.
- Notwithstanding the above, any person who is serving as a whole time director/managing director in any listed entity shall serve as an independent director in not more than 3 listed entities.*

For the purpose of this sub-regulation, the count for the number of listed entities on which a person is a director/independent director shall be only those whose equity shares are listed on a stock exchange.

3 Membership in Committees of BOD

- A director shall not be a member in more than 10 committees or act as chairperson of more than 5 committees across all listed entities in which he is a director which shall be determined as follows:
- all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and companies u/s 8 of the Companies Act, 2013 shall be excluded;
 - for the purpose of determination of limit, chairpersonship and membership of the audit committee and the Stakeholders' Relationship Committee alone shall be considered.

(SEBI (LODR) Regulations, 2015)

Committees of Board of Directors

Nomination and Remuneration Committee

- (1) The board of directors shall constitute the nomination and remuneration committee as follows:
 - (a) the committee shall comprise of at least three directors;
 - (b) all directors of the committee shall be non-executive directors; and
 - (c) at least 50% of the directors shall be independent directors.
- (2) The Chairperson of the nomination and remuneration committee shall be an independent director.

Provided that the chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.
- (3) ***The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.***
- (4) The Chairperson of the nomination and remuneration committee may be present at the AGM, to answer the shareholders' queries; however, it shall be up to the chairperson to decide who shall answer the queries.
- (5) ***The nomination and remuneration committee shall meet at least once in a year.***
- (6) The role of the nomination and remuneration committee shall be as specified in **Part D of the Schedule II.**

Stakeholder Relationship Committee

- The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.
- The chairperson of this committee shall be a non-executive director.
- ***At least three directors, with at least one being an independent director, shall be members of the Committee.***
- ***The Chairperson of the Stakeholders Relationship Committee shall be present at the AGM to answer queries of the security holders.***
- ***The stakeholder relationship committee shall meet at least once in a year.***
- The role of the Stakeholders Relationship Committee shall be as specified in **Part D of the Schedule II.**

Risk Management Committee

- The board of directors shall constitute a Risk Management Committee.
- The majority of members of Risk Management Committee shall consist of members of the board of directors.
- The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- ***The risk management committee shall meet at least once in a year.***
- The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit, such function shall specifically cover cyber security.
- The provisions of this regulation shall be applicable to top 500 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

(SEBI (LODR) Regulations, 2015)

MISCELLANEOUS

1	Content of Management Discussion and Analysis	3	Report on Corporate Governance
	<ol style="list-style-type: none"> 1. Industry structure and developments. 2. Opportunities and Threats. 3. Segment-wise or product-wise performance. 4. Outlook 5. Risks and concerns. 6. Internal control systems and their adequacy. 7. Discussion on financial performance. 8. Material developments in Human Resources/Industrial Relations front, including number of people employed. 9. Details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including: <ul style="list-style-type: none"> • Debtors Turnover • Inventory Turnover • Interest Coverage Ratio • Current Ratio • Debt Equity Ratio • Operating Profit Margin (%) • Net Profit Margin (%) • or sector-specific equivalent ratios, as applicable. 10. Details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof. 		<ul style="list-style-type: none"> • There shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. • Non-compliance of any mandatory requirement of SEBI (LODR) regulations with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. • The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the prescribed format. <p>The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.</p>
		4	Compliance Certificate from Auditor <ul style="list-style-type: none"> • The company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in these regulations and annex the certificate with the directors' report, which is sent annually to all the shareholders of the company. • The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.
2	CEO/CFO Certification to Board <ol style="list-style-type: none"> (a) They have reviewed F.S. & CFS and that to the best of their knowledge & belief: <ul style="list-style-type: none"> • These statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading. • These statements together present a true and fair view of the company's affairs & are in compliance with existing AS, applicable laws and regulations. (b) There are no transactions entered that are fraudulent, illegal and violative of the company's code of conduct. (c) They accept responsibility for establishing & maintaining IC w.r.t. financial reporting. (d) They have indicated to the auditors & A.C.: <ul style="list-style-type: none"> • Significant changes in I.C. • Significant changes in accounting policies during the year. • Instances of significant fraud. 	5	Circumstances in which adverse or qualified statement can be issued on Corporate Governance <ol style="list-style-type: none"> 1. Number of non-executive directors is < 50% of the strength of BOD. 2. A qualified and independent audit committee is not set up. 3. The chairman of the audit committee is not an independent director. 4. The audit committee does not meet four times a year. 5. Necessary powers not been vested by Board in the audit committee. 6. Time gap between two Board meetings is more than four months. 7. Director is a member of more than 10 committees. 8. Information of quarterly results is neither put on the company's website nor sent in a form so as to enable the Stock Exchange to put it on its own website. 9. The power of share transfer is not delegated to an officer or a committee or to the registrar and share transfer agents.