

**GUIDANCE NOTE  
ON  
DILIGENCE REPORT FOR BANKS**



**THE INSTITUTE OF  
Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
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## **PREFACE**

In order to streamline consortium / multiple banking arrangements, Reserve Bank of India has been making regulatory prescriptions from time to time regarding conduct of consortium / multiple banking. Banks have also been advised to strengthen their information back-up about the borrowers enjoying credit facilities from multiple banks by following specified criteria.

Way back in October 1996, Reserve Bank of India withdrew various regulatory prescriptions regarding conduct of consortium/multiple banking/syndicate arrangements so as to bring flexibility in the credit delivery system. With the passage of time, however, it was observed that the relaxations meant for providing flexibility to the borrowing community, may also have contributed to various types of frauds, prompting the Central Vigilance Commission to attribute the incidence of frauds mainly to the lack of effective sharing of information about the credit history and the conduct of account of the borrowers among various banks.

Accordingly, Reserve Bank of India has in consultation with the Indian Banks' Association, specified the framework to be observed by banks for improving the sharing/dissemination of information among the banks about the status of the borrowers enjoying credit facilities from more than one bank. Further, the banks are required to obtain regular certification of Diligence Report from a professional, preferably a Company Secretary about conformity to statutory prescriptions in vogue. Thus, the banking community in general and the Regulator in particular have reposed enormous trust on professionals.

The Diligence Report covers many critical and relevant matters such as details of the Board of Directors, shareholding pattern, details of the forex exposure and overseas borrowings, risk mitigation through insurance cover in respect of all assets, payment of all statutory dues and other compliances, proper utilisation/end-use of the loan funds, compliance with mandatory Accounting Standards, compliance with various clauses of Listing Agreement in case of a listed company etc. The compact structure of the Diligence Report under its twenty-five paragraphs makes it obligatory for a Practicing Company Secretary to prepare the Report after critical examination of all relevant records and documents of the borrowing companies which demands a high degree of care, skill and knowledge.

The introduction of diligence reporting by Company Secretary in Practice is expected to lay down a strong foundation for good governance culture among borrowing corporates and correspondingly enhance the comfort level of the banks by reducing the information asymmetry prevailing currently..

The format of Diligence Report along with its contents were conceptualized sometime during 2004 by the then Practicing Company Secretaries Committee of the Council. After consistent and rigorous follow-up, inputs were obtained from Reserve Bank of India as well as nationalized banks and the format of Diligence Report was accordingly reviewed, refined and finalised. On the advice

of the regulatory authorities, the same was submitted to the Chairmen of various nationalized banks for adoption in 2007. Subsequently, on the advice of Shri M Balachandran, the then Chairman & Managing Director, Bank of India, and Late Shri A D Parulkar, Former Executive Director, Bank of India, the Diligence Report was submitted to the Central Vigilance Commission and Indian Banks Association (IBA). On the recommendation of Basel II Committee of the IBA, the Managing Committee of the IBA approved the same for implementation and subsequently forwarded to the Reserve Bank of India.

With a view to build competencies of our practicing members desirous of taking up the exercise of Diligence Reporting for Banks, the Institute has developed this Guidance Note, based on the format of the Diligence Report prescribed by the RBI vide its Circular No. DBOD.No. BPBC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB.No. 49/13.05.000/2008-09 dated February 12, 2009.

The draft of the Guidance Note prepared by the Secretariat of the Institute and revised by ICSI-CCRT was finalized by the Practicing Company Secretaries Committee (PCSC) and approved by the Council of the Institute.

I place on record my sincere thanks to the High Level Core Group on Banking & Finance under the Chairmanship of Shri M S Sundara Rajan, a senior member of the Institute and Chairman & Managing Director, Indian Bank, comprising Shri S Kothandaraman, General Manager, Risk Management & Credit Monitoring, Bank of India, Mrs. Malathi Mohan, General Manager, Punjab National Bank, Shri N G Kamat, Sr. Vice President Admn. & Accts., Indian Banks' Association, Shri S N Ananthasubramanian, Practicing Company Secretary & Council Member, The ICSI, Shri B B Chatterjee, Executive Vice President & Company Secretary, ITC Limited & Council Member, The ICSI, Shri.V.S.Khanvalkar, Vice-President, The ICSI, Shri N K Jain, Secretary & CEO, The ICSI; Chairman and members of Secretarial Standards Board and Practicing Company Secretaries Committee and other Council Members of the ICSI, officers and staff of ICSI-CCRT, SIRC of the ICSI and ICSI Secretariat for their efforts in finalizing the publication.

I also take this opportunity to express my sincere thanks to Shri A V Murlidharan, Chairman & Managing Director, Export Credit and Guarantee Corporation of India, Shri Girish Radhakrishnan, General Manager (Aviation), New India Assurance Company Ltd., Shri R N Vadivelu, Chief Executive, Foreign Exchange Dealers' Association of India (FEDAI), Shri Gopalkrishnan Iyer, General Manager (Listing), Bombay Stock Exchange Limited, Shri.V. Ganesan, General Manager, Indian Bank, Shri Suresh V Nayak, Deputy General Manager, Indian Bank, Shri Y P Kohli, Assistant General Manager, Indian Bank, Shri Ganesh Ratnam, Company Secretary, Indian Bank and other senior officers of Indian Bank, for their valuable contribution in the finalisation of this Guidance Note.

I commend the dedicated efforts put in by Shri Saurabh Jain, Education Officer of the Institute, for preparing the basic draft of the Guidance Note, incorporating suggestions and finalising the same under the able guidance of

Shri Gopal Chalam, Dean, ICSI-CCRT and Shri Sutanu Sinha, Director (Academics) of the Institute.

The task of bringing out this Guidance Note has been successfully completed under the overall supervision and dynamic stewardship of Shri N K Jain, Secretary & Chief Executive Officer of the Institute.

I also thank all those authors and experts whose guidance, cooperation and material were sought in bringing out this Guidance Note.

The Guidance Note provides detailed checklist for reporting upon various paragraphs of the Diligence Report. I am confident that the Guidance Note will facilitate the practicing members in carrying out the Diligence Reporting exercise efficiently.

In any publication of this nature, there would always be scope for further improvement. I would personally be grateful to the users and readers for offering their suggestions for further refinement.

*Place* : New Delhi

**Datla Hanumanta Raju**

*Date* : April 04, 2009

*President, The ICSI*

## **FOREWORD**

I convey my gratitude to the ICSI for reposing faith on me to lead a very high profile Core Group towards bringing out this Guidance Note on Diligence Report for Banks in accordance with the RBI Circulars on Multiple Banking / Consortium Lending Agreements.

During the course of our deliberations at the various meetings of the Group, it dawned upon us that the entire process of Diligence Reporting is interwoven and that the banks and Company Secretaries need to work in tandem. The Group suggested certain changes in the scope and format of diligence report which were well received by the Indian Banks Association and Reserve Bank of India as is evident from the subsequent circulars issued by the Reserve Bank of India post September 19, 2008.

The Group was of the unanimous view that the diligence report sought to be issued by Company Secretaries in Practice would give a high level of comfort to the banks entering into consortium lending / multiple banking arrangements. But this level of comfort places upon Company Secretaries the onerous duty of carrying out the exercise of diligence reporting in accordance with the highest standards of service delivery and ethics.

The Core competencies of company secretaries being corporate compliance management, I trust that this Guidance Note on Diligence Reporting for Banks would definitely strengthen the capacities of the Company Secretaries in Practice willing to take up the task of diligence reporting for banks.

I would like to place on record my sincere thanks to all the members of the High Level Core Group on Banking & Finance namely Shri S Kothandaraman, GM, Risk Management, Bank of India, Mrs. Malathi Mohan, General Manager, Punjab National Bank, Shri N G Kamath, Sr. Vice President Admn. & Accts., Indian Banks Association, Shri Vinayak S Khanvalkar, Vice President, The ICSI, Shri B B Chatterjee, Council Member, The ICSI, Shri S N Ananthasubramanian, Council Member, The ICSI and Shri N K Jain, Secretary and CEO, The ICSI for rendering their valuable contributions in bringing out this publication. I wish to place on record my thanks for Shri Gopal Chalam, Dean, ICSI-CCRT, Shri Sutanu Sinha, Director, The ICSI and other officers of the ICSI as well as my colleagues namely Shri V Ganesan, General Manager, Shri Suresh V Nayak, Deputy General Manager, Shri Y P Kohli, Assistant General Manager and Shri Ganesh Ratnam, Company Secretary of Indian Bank for their efforts in providing the necessary inputs to the Core Group during the preparation of this Guidance Note.

I compliment the ICSI in bringing out this Guidance Note within the scheduled time and sincerely hope that the Guidance Note on Diligence Reporting for Banks would be of immense use for Company Secretaries in Practice as well as the banking community.

March 31, 2009

Chennai

**M. S. Sundara Rajan**  
*Chairman & Managing Director,*  
Indian Bank & Chairman  
High Level Core Group on Banking & Finance, The ICSI

## FOREWORD



Reserve Bank of India, looking to the needs of the industry has liberalized rules for consortium lending a little more than a decade back. Multiple banking as a concept had also started gaining ground at that time and many corporates opted for the multiple banking route presumably due to the perceived rigidity of the consortium arrangement. Sadly, exchange of information between banks was minimal and resultantly unethical borrowers were able to take advantage of the information asymmetry that prevailed.

The Central Vigilance Commission concerned at this development had attributed this phenomena to lack of effective sharing of information among banks. A felt need, all along has also been the requirement to have certification of statutory compliance by a Company through a professional such as a Company Secretary/Chartered Accountant/Cost Accountant so that the lending banker gets the desired comfort.

Reserve Bank of India, in consultation with IBA, issued guidelines in September 2008 covering both the above aspects. I am happy that the Institute of Company Secretaries of India has come out with a Guidance Note on Diligence Report covering all the aspects cited in the RBI communication. Bankers would feel quite empowered to deal with the lending proposition once they have the Diligence Report in their hands.

The banking community places considerable importance to the certification and I am sure that Practicing Company Secretaries would uphold the high values that are expected of them while issuing the report.

The well researched Guidance Note on Diligence Report would provide a ready reference tool for the Company Secretaries while undertaking the assignment.

April 6, 2009

**T. S. Narayanasami**  
*Chairman*  
Indian Banks' Association  
Mumbai



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## **GUIDANCE NOTE ON DILIGENCE REPORT FOR BANKS**

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### **Introduction**

The Reserve Bank of India vide its Circular No. DBOD NO. BP. BC. 46/08.12.001/2008-09 dated September 19, 2008 advised all the scheduled commercial Banks (excluding RRBs and LABs) to obtain regular certification (DILIGENCE REPORT) by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions that are in vogue, as per specimen given in the aforesaid notification. Further RBI vide its Circular dated January 21, 2009 also advised all Primary Urban Co-operative Banks to obtain Diligence Report. Subsequently the RBI vide its Circulars dated December 08, 2008 and February 10, 2009 revised the format of Diligence Report for Scheduled Commercial Banks and also for Primary Urban Co-operative Banks vide its Circular dated February 12, 2009. A list of circulars issued by the RBI in respect of Diligence Reporting is as under :

<i>Sl. No.</i>	<i>Date of Issue</i>	<i>Circular No.</i>	<i>Copy placed as</i>
1.	19/09/08	DBOD NO. BP. BC. 46/08.12.001/2008-09	Annexure A
2.	08/12/08	DBOD No. B.P. BC 94/08.12.001/2008-2009	Annexure B
3.	21/01/09	UBD.PCBNo. 36/13.05.000/2008-09	Annexure C
4.	10/02/09	DBOD.No. BP.BC. 110/08.12.001/2008-09	Annexure D
5.	12/02/09	UBD.PCB.No. 49 /13.05.000/2008-09	Annexure E

### **Background**

In October 1996, various regulatory prescriptions regarding conduct of consortium / multiple banking / syndicate arrangements were withdrawn by Reserve Bank of India with a view to introducing flexibility in the credit delivery system and to facilitate smooth flow of credit. However, Central Vigilance Commission (CVC), Government of India, in the light of frauds involving

consortium/multiple banking arrangements which have taken place in the recent past, expressed concerns on the working of Consortium Lending and Multiple Banking Arrangements in the banking system. The CVC attributed the incidence of frauds mainly to the lack of effective sharing of information about the credit history and the conduct of the account of the borrowers among various banks.

The matter was examined by the Reserve Bank of India (RBI) in consultation with the Indian Banks Association (IBA) who were of the opinion that there is need for improving the sharing/dissemination of information among the banks about the status of the borrowers enjoying credit facilities from more than one bank.

The RBI vide its Circular No. RBI/2008-2009-313/DBOD No. B.P. BC 94/08.12.001/2008-2009 dated December 08, 2008, advised the banks 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. In the case of existing lenders, all the banks may seek a declaration from their existing borrowers availing sanctioned limits of Rs. 5.00 crore and above or wherever, it is in their knowledge that their borrowers are availing credit facilities from other banks, and introduce a system of exchange of information with other banks as indicated above.
- (ii) Subsequently, banks should exchange information about the conduct of the borrowers' accounts with other banks at least at quarterly intervals.
- (iii) Obtain regular certification by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions that are in vogue.
- (iv) Make greater use of credit Reports available from Credit Information Bureau of India Limited (CIBIL).
- (v) The banks should incorporate suitable clauses in the loan agreements in future (at the time of next renewal in the case of existing facilities) regarding exchange of credit information so as to address confidentiality issues.

### **Scope of Diligence Report**

The Practising Company Secretary (PCS) is required to certify compliance in respect of matters specified in the RBI Circular No. DBOD NO. BP. BC. 46/08.12.001/2008-09 dated September 19, 2008. Para (2)(iii) of the RBI Circular specifies that the Diligence Report shall be in the format given in Annex III thereto. The format has been subsequently revised and streamlined by RBI.

**Format of Diligence Report****DILIGENCE REPORT\***

To

The Manager,

\_\_\_\_\_ (Name of the Bank)

I/We have examined the registers, records, books and papers of ..... Limited having its registered office at..... as required to be maintained under the Companies Act, 1956 (the Act) and the rules made thereunder, the provisions contained in the Memorandum and Articles of Association of the Company, the provisions of various statutes, wherever applicable, as well as the provisions contained in the Listing Agreement/s, if any, entered into by the Company with the recognized stock exchange/s for the half year ended on..... . In my/our opinion and to the best of my/our information and according to the examination carried out by me/us and explanations furnished to me/us by the Company, its officers and agents. I/We report that in respect of the aforesaid period:

1. The management of the Company is carried out by the Board of Directors comprising of as listed in Annexure ....., and the Board was duly constituted. During the period under review the following changes that took place in the Board of Directors of the Company are listed in the Annexure ....., and such changes were carried out in due compliance with the provisions of the Companies Act, 1956.
2. The shareholding pattern of the company as on ..... was as detailed in Annexure ..... During the period under review the changes that took place in the shareholding pattern of the Company are detailed in Annexure..... .
3. The company has altered the following provisions of
  - (i) The Memorandum of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose.
  - (ii) The Articles of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose.
4. The company has entered into transactions with business entities in which directors of the company were interested as detailed in Annexure..... .
5. The company has advanced loans, given guarantees and provided securities amounting to Rs. .... to its directors and/or persons or firms or companies in which directors were interested, and has complied with Section – 295 of the Companies Act, 1956.

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\* (As contained in RBI Circular No. DBOD.No. BPBC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB.No. 49/13.05.000/2008-09 dated February 12, 2009)

6. The Company has made loans and investments; or given guarantees or provided securities to other business entities as detailed in Annexure.... and has complied with the provisions of the Companies Act, 1956.
7. The amount borrowed by the Company from its directors, members, financial institutions, banks and others were within the borrowing limits of the Company. Such borrowings were made by the Company in compliance with applicable laws. The break up of the Company's domestic borrowings were as detailed in Annexure ....
8. The Company has not defaulted in the repayment of public deposits, unsecured loans, debentures, facilities granted by banks, financial institutions and non-banking financial companies.
9. The Company has created, modified or satisfied charges on the assets of the company as detailed in Annexure.... Investments in wholly owned Subsidiaries and/or Joint Ventures abroad made by the company are as detailed in Annexure .....
10. Principal value of the forex exposure and Overseas Borrowings of the company as on ..... are as detailed in the Annexure under.
11. The Company has issued and allotted the securities to the persons-entitled thereto and has also issued letters, coupons, warrants and certificates thereof as applicable to the concerned persons and also redeemed its preference shares/debentures and bought back its shares within the stipulated time in compliance with the provisions of the Companies Act, 1956 and other relevant statutes.
12. The Company has insured all its secured assets.
13. The Company has complied with the terms and conditions, set forth by the lending bank/financial institutions at the time of availing any facility and also during the currency of the facility.
14. The Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956.
15. The Company has insured fully all its assets.
16. The name of the Company and or any of its Directors does not appear in the defaulters' list of Reserve Bank of India.
17. The name of the Company and or any of 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 of any such dues.
19. The funds borrowed from banks/financial institutions have been used by the company for the purpose for which they were borrowed.
20. The Company has complied with the provisions stipulated in Section 372A of the Companies Act in respect of its Inter Corporate loans and investments.
21. It has been observed from the Reports of the Directors and the Auditors



that the Company has complied with the applicable Accounting Standards issued by the Institute of Chartered Accountants in India.

22. The Company has credited and paid to the Investor Education and Protection Fund within the stipulated time, all the unpaid dividends and other amounts required to be so credited.
23. Prosecutions initiated against or show cause notices received by the Company for alleged defaults/offences under various statutory provisions and also fines and penalties imposed on the Company and or any other action initiated against the Company and /or its directors in such cases are detailed in Annexure.....
24. The Company has (being a listed entity) complied with the provisions of the Listing Agreement.
25. The Company has deposited within the stipulated time both Employees' and Employer's contribution to Provident Fund with the prescribed authorities.

*Note :* The qualification, reservation or adverse remarks, if any, are explicitly stated may be stated at the relevant paragraphs above place(s).

Place :

Signature :

Date :

Name of Company Secretary/Firm :

C.P. No. :

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### **GUIDANCE ON DILIGENCE REPORTING**

The following paragraphs outline the Compliance Inputs that may be relied upon by the PCS for the purpose of issue of Diligence Report. Compliance Inputs and checklist are indicative and PCS shall not exclusively rely upon that, but use that as a guide and apply his own judgement to determine what is to be checked and to what extent.

#### **Period of Reporting**

Annex. III to the RBI Notification provides that the Diligence Report shall be made on a half yearly basis.

#### **Secretary in Whole-Time Practice**

Section 2(45A) of the Company Secretaries Act, 1980 defines "secretary in whole-time practice" as a secretary who shall be deemed to be in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980 and who is not in full-time employment. Thus, a member of the Institute of Company Secretaries of India, who is not in full-time employment can become a Secretary in whole-time practice (hereinafter referred to as PCS) after obtaining from the Council of the Institute a Certificate of Practice under section 6 of the Company Secretaries Act, 1980 and the regulations thereunder.

#### **Right to Access Records and Methodology for Diligence Reporting**

To enable the PCS to issue the Diligence Report, the Company (borrower) should provide the PCS access at all times to the books, papers, minutes books,

forms and returns filed under various statutes, documents and records of the company, whether kept in pursuance of the applicable laws or otherwise and whether kept at the registered office of the company or elsewhere which he considers essential for the purposes of Diligence Reporting. The PCS shall be entitled to require from the officers or agents of the company, such information and explanations as the PCS may think necessary for the purpose of such Reporting. However, depending on the facts and circumstances he/she may obtain a letter of representation from the company in respect of matters where verification by PCS may not be practicable, for example matters like —

- (i) dis-qualification of directors;
- (ii) show cause notices received;
- (iii) persons and concerns in which directors are interested, etc.

### **Reporting with Qualification**

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

If the PCS is unable to form any opinion with regard to any specific matter, the PCS shall state clearly the fact that he is unable to form an opinion with regard to that matter and the reasons thereof.

If the scope of work required to be performed, is restricted on account of limitations imposed by the company or on account of circumstantial limitations (like certain books or papers being in custody of another person or Government Authority) the Report shall indicate such limitation.

If such limitations are so material as to render the PCS incapable of expressing any opinion, the PCS should state that:

*“in the absence of necessary information and records, he is unable to report compliance(s) or otherwise by the Company”.*

PCS shall have due regard to the circulars and/or clarifications issued by the Reserve Bank of India from time to time. It is recommended that a specific reference of such circulars at the relevant places in the Report shall be made, wherever possible.

### **Professional Responsibility and Penalty for False Diligence Report**

While the RBI Notification has opened up a significant area of practice for Company Secretaries, it equally casts immense responsibility on them and poses a greater challenge whereby they have to justify fully the faith and confidence reposed by the banking industry and measure up to their expectations. Company Secretaries must take adequate care while issuing Diligence Report.

Any failure or lapse on the part of a Practising Company Secretary (PCS) in issuing a Diligence Report may not only attract penalty for false Reporting and disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980 but also make him liable for any injury caused to any person due to his / her negligence in issuing the Diligence Report. Therefore, it becomes imperative for the PCS that he/she exercises great care and caution while issuing the Diligence Report and also adheres to the highest standards of professional ethics and excellence in providing his/her services.

### **Disqualifications of Secretary in Whole-Time Practice**

With a view to ensure that PCS shows utmost integrity and independence of judgement in the performance of his/her duties, it is desirable that he/she, should not accept any assignment for giving Diligence Report to a Bank, if he/it is-

- (a) a body corporate;
- (b) an officer or employee of the company;
- (c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
- (d) a person who is indebted to the company for an amount exceeding one thousand rupees, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees;
- (e) a person holding any security of that company which carries voting rights.

However, any securities held by such person as nominee or trustee for any third person and in which the holder has no beneficial interest shall be excluded from such disqualification.

Further, if a person is not qualified for appointment as PCS of a company for reasons stated above, then he is also disqualified for appointment as PCS of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company. If a PCS becomes subject, after his appointment, to any of the disqualifications specified above, he should vacate his office as such.

### **Communication to earlier incumbent**

In view of the provisions of clauses (8) and (11) of Part I of the First Schedule to the Company Secretaries Act, 1980, whenever a new incumbent is assigned the Diligence Report work, he should first communicate his appointment to the earlier incumbent in writing by registered post.

Where, however, in the same year a Secretary in whole-time practice is appointed in place of another Secretary in whole-time Practice, who was appointed initially, the new incumbent should not only first communicate the same to the previous incumbent in writing by Registered Post but also first seek his consent (preferably in writing).

**PARAWISE COMPLIANCE INPUTS  
AND  
CHECKLIST FOR ISSUE OF  
DILIGENCE REPORT**



**Parawise Compliance Inputs and Checklist for Issue of Diligence Report**

While preparing the Diligence Report the PCS should ensure that no field in the report is left blank. If there is nothing to be 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.

The PCS should obtain a list of statutes applicable to the Company before proceeding with the assignment for issue of Diligence Report.

**PARA 1 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB.No. 49/13.05.000/2008-09 dated February 12, 2009**

*"1. The management of the Company is carried out by the Board of Directors comprising of as listed in Annexure ....., and the Board was duly constituted. During the period under review the changes that took place in the Board of Directors of the Company are listed in the Annexure ....., and such changes were carried out in due compliance with the provisions of the Companies Act, 1956."*

**Format for disclosing information about each Director  
(As on last date of financial year)**

<i>Name of Director</i>	<i>Shri/Ms.</i>	<i>Shri/Ms.</i>	<i>Shri/Ms.</i>	<i>Shri/Ms.</i>
(1)	(2)	(3)	(4)	(5)

Date of Birth

DIN/DPIN

PAN No.

Present Address / Permanent Address

Position of Director: Chairman/ MD/WTD/Manager etc.

Category of director: Promoter/ Executive/ Non executive/ Independent/ Nominee

If nominee, Name of the Institution: (whether Institution is Lending or investing institution/company/body corporate)

Academic qualifications :

Date of joining the Company :

Relationship with other directors :

Total number of directorships :

(1)	(2)	(3)	(4)	(5)
No. of committee memberships across Companies:				
Number of Committee Chairmanships across companies :				
<b>Total No. of Directors</b>				
<i>Promoter</i>	<i>Executive</i>	<i>Non executive</i>	<i>Independent</i>	<i>Nominee</i>

In case of promoter directors give the name and brief history of other concern(s) in which the promoters are interested.

#### **Changes in Directors**

<i>Name</i>	<i>Date of Change</i>	<i>Particulars of Change</i>	<i>Reason for Change</i>	<i>E-filing Reference</i>
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Check whether a valid board constitution remained throughout the period under review.

#### **Composition of Board**

In case of listed Company check whether the provisions of Clause 49 of the Listing Agreement have been complied with in respect of composition of the Board.

(Detailed reference in this regard is made under paragraph 24)



In case of private limited company check that the minimum no. of directors on the Board never fell below two at any point of time.

In case of an unlisted public company check that the minimum number of directors on the Board was never below three at any point of time.

### **Compliance Inputs**

- Register of Directors maintained u/s 303 of the Companies Act, 1956.
- Minutes of the Board Nomination Committee, if any, and General Meetings to verify resolution of the Board of Directors / Company appointing, designating, varying the terms of appointment of each director and notices and explanatory statements pertaining to such matters.
- E-Form 32 filed with ROC with its paid challan.
- Minimum and maximum number of Directors on the Board as prescribed under the Articles of Association/Board resolution.
- Resolution of the Board of Directors / Company appointing, designating, varying the terms of appointment of each director and notices and explanatory statements pertaining to such matters.
- Resume of each Director.
- Disclosure of interest made by each Director u/s 299 of the Companies Act, 1956.
- Register of Directors Shareholding.
- Register of Firms/parties in which Directors are interested.
- Extract of relevant minutes.
- Declaration given by the Directors u/s 274 of the Companies Act, 1956.
- Abstract of terms of appointment of Directors, Managing / Wholetime Directors, Manager u/s 302 of the Companies Act, 1956.
- Loan Agreements with Bank(s) / financial institution(s) to verify their consent required for appointment of Managing / Wholetime Directors, Manager.

### **Checklist**

- (a) Check if the company has the minimum number of directors - three in the case of a public company and two in the case of a private company
- (b) Check whether action was taken to bring the number to the minimum if the number had fallen below the minimum.

- (c) Check whether the first directors were appointed in accordance with the articles, if it is a new company.
- (d) Check whether the provisions of sections 255 and 256 of the Companies Act, 1956 have been duly complied with respect to retirement of directors by rotation.
- (e) Check whether persons other than retiring directors who were candidates for directorship at the general meeting had complied with the provisions of Section 257 of the Companies Act, 1956.
- (f) Check whether approval of the Central Government has been obtained, if the number of directors has been increased to more than twelve.
- (g) Check whether the appointment of additional directors was in accordance with the Articles of Association of the company.
- (h) If the board has filled up casual vacancy among directors appointed in general meeting, check whether the appointment was in accordance with the articles and was made at a meeting of the Board.
- (i) Check the authority of the Board under sections 313 and 260 of the Companies Act, 1956 respectively, if the board has approved any alternate / additional director during the period under review.
- (j) Check whether the appointment of any nominee directors during the period under review, was in consonance with the provisions of the articles of the company and the loan agreement. Also check whether the approval of the Government, under Section 259 of the Companies Act, 1956, if required, has been obtained.
- (k) Check whether each of the directors had given consent to act as director within 30 days of his appointment and the consent was filed with the Registrar in e-form no. 32.
- (l) Check the declaration under Section 274 of the Companies Act, 1956 that none of the directors suffers from any of the disqualifications.
- (m) Check with reference to Section 283 of the Companies Act, 1956 that the office of any director did not fall vacant on account of any of the disqualifications specified in the section.
- (n) Check that the provisions of Section 284 of the Companies Act, 1956 were complied with, if any director was removed before the expiry of his term of office.
- (o) Check whether the director's other directorship(s) were within the limits prescribed under Section 278 of the Companies Act, 1956.

**Appointment of Managing director, whole-time director or manager**

- (a) Check with reference to Section 269 read with Schedule XIII of the Companies Act, 1956 if the appointment was in order.
- (b) Check whether
  - (i) the appointment was in accordance with the conditions specified in parts I and II of Schedule XIII;
  - (ii) return in e-form no. 25C was filed with the Registrar within ninety days of the appointment; and
  - (iii) the appointment has been approved by the members in general meeting - where the appointment has been made without the approval of the Central Government.
- (c) Check whether application in e-form no. 25A seeking the approval of the Central Government was made within ninety days of the appointment and whether the approval of the Central Government has been received - if the appointment was not under Schedule XIII and the appointment was required to be made with the approval of the Central Government.
- (d) Check whether the appointment was approved by the bank(s) / financial institution(s), wherever required.
- (e) Check that the managing director or whole-time director does not suffer from any of the disqualifications specified in Sections 274 and 267 of the Companies Act, 1956. In the case of manager, check with reference to Section 385 of the Companies Act, 1956.
- (f) Check whether remuneration paid to Directors / Managing / Whole-time Director(s) is in accordance with the provisions of the Companies Act, 1956 viz. Section 269, Schedule XIII and terms and conditions of approval.
- (g) Check if Sections 316 & 386 of the Companies Act, 1956 were applicable whether the unanimous board resolution was passed.

**PARA 2 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB.No. 49/13.05.000/2008-09 dated February 12, 2009**

*"2. The shareholding pattern of the company as on .....was as detailed in Annexure .....: During the period under review the changes that took place in the shareholding pattern of the Company are detailed in Annexure.....:"*

In case of listed companies the shareholding pattern as prescribed by SEBI may be followed.

**Draft Format of the Shareholding Pattern***Statement Showing Shareholding Pattern*

Name of the Company :

As on ..... (date)

Scrip Code :

Quarter Ended :

Category code	Category of Shareholder	No. of Shareholders	Total no. of shares	No. of shares held in dematerialized form	Total shareholding as a percentage of		Shares pledged or otherwise encumbered	
					As a percentage of (A + B) <sup>1</sup>	As a percentage of (A + B + C)	Number of shares	As a percentage
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9) = (8)/(7) * 100
<b>(A)</b>	<b>Shareholding of Promoter and Promoter Group<sup>2</sup></b>							
<b>1</b>	<b>Indian</b>							
(a)	Individuals/ Hindu Undivided Family							
(b)	Central Government/ State Government(s)							
(c)	Bodies Corporate							
(d)	Bank(s) / financial institution(s)							
(e)	Any Others(Specify)							
	<b>Sub Total (A)(1)</b>	<b>0</b>	<b>0</b>	<b>0</b>				
<b>2</b>	<b>Foreign</b>							
a	Individuals (Non-Resident Individuals/ Foreign Individuals)							
b	Bodies Corporate							
c	Institutions							
d	Any Others(Specify)							
	<b>Sub Total (A)(2)</b>	<b>0</b>	<b>0</b>	<b>0</b>				
	<b>Total Shareholding of Promoter and Promoter Group (A) = (A)(1)+(A)(2)</b>	<b>0</b>	<b>0</b>	<b>0</b>				

- For determining public shareholding for the purpose of Clause 40A of the Listing Agreement
- For definitions of "Promoter" and "Promoter Group", refer to Clause 40A of the Listing Agreement

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
<b>(B)</b>	<b>Public shareholding<sup>3</sup></b>						NA	NA
<b>1</b>	<b>Institutions</b>						NA	NA
(a)	Mutual Funds/ UTI							
(b)	Financial institution/ Banks							
(c)	Central Government/ State Government(s)							
(d)	Venture Capital Funds							
(e)	Insurance Companies							
(f)	Foreign Institutional Investors							
(g)	Foreign Venture Capital Investors							
(h)	Any Other (specify)							
	<b>Sub-Total (B)(1)</b>	<b>0</b>	<b>0</b>	<b>0</b>				
<b>B 2</b>	<b>Non-institutions</b>						NA	NA
(a)	Bodies Corporate							
(b)	Individuals							
	i. Individual share- holders holding nominal share capital up to Rs 1 lakh							
II	ii. Individual share- holders holding nominal share capital in excess of Rs. 1 lakh.							
(c)	Stock Option / ESOPs							
(d)	Any other (Specify)							
	<b>Sub-Total (B)(2)</b>	<b>0</b>	<b>0</b>	<b>0</b>				
	<b>Total Public Shareholding (B)= (B)(1)+(B)(2)</b>	<b>0</b>	<b>0</b>	<b>0</b>			NA	NA
	<b>TOTAL (A)+(B)</b>	<b>0</b>	<b>0</b>	<b>0</b>				
<b>(C)</b>	<b>Shares held by Custodians and against which Depository Receipts have been issued</b>					NA	NA	NA
	<b>GRAND TOTAL (A)+(B)+(C)</b>	<b>0</b>	<b>0</b>	<b>0</b>				

NA — Not Applicable

3. For definitions of "Public Shareholding", refer to Clause 40A of the Listing Agreement.

### Changes in Shareholding Pattern

Name of the Company :

Scrip Code :

Category code	Category of Shareholder	Last Period		Current Period		Changes during the period
		Total shareholding as a percentage of total number of shares		Total shareholding as a percentage of total number of shares		
		As a percentage of (A+B)	As a percentage of (A+B+C)	As a percentage of (A+B)	As a percentage of (A+B+C)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
<b>(A) Shareholding of Promoter and Promoter Group</b>						
<b>1 Indian</b>						
(a)	Individuals/ Hindu Undivided Family					
(b)	Central Government/ State Government(s)					
(c)	Bodies Corporate					
(d)	Bank(s) / financial institution(s)					
(e)	Any Others(Specify)					
<b>Sub Total (A)(1)</b>		<b>0</b>	<b>0</b>	<b>0</b>		
<b>2 Foreign</b>						
a	Individuals (Non-Residents Individuals/ Foreign Individuals)					
b	Bodies Corporate					
c	Institutions					
d	Any Others(Specify)					
<b>Sub Total (A)(2)</b>		<b>0</b>	<b>0</b>	<b>0</b>		
<b>Total Shareholding of Promoter and Promoter Group (A)= (A)(1)+(A)(2)</b>		<b>0</b>	<b>0</b>	<b>0</b>		

(1)	(2)	(3)	(4)	(5)	(6)	(7)
<b>(B)</b>	<b>Public shareholding</b>					
<b>1</b>	<b>Institutions</b>					
(a)	Mutual Funds/ UTI					
(b)	Bank(s) / financial institution(s)					
(c)	Central Government/ State Government(s)					
(d)	Venture Capital Funds					
(e)	Insurance Companies					
(f)	Foreign Institutional Investors					
(g)	Foreign Venture Capital Investors					
(h)	Any Other (specify)					
	<b>Sub-Total (B)(1)</b>	<b>0</b>	<b>0</b>	<b>0</b>		
<b>B 2</b>	<b>Non-institutions</b>					
(a)	Bodies Corporate					
(b)	Individuals					
	i. Individual shareholders holding nominal share capital up to Rs 1 lakh					
	ii. Individual shareholders holding nominal share capital in excess of Rs. 1 lakh.					
(c)	Stock Option / ESOPs					
(d)	Any others (specify)					
	<b>Sub-Total (B)(2)</b>	<b>0</b>	<b>0</b>	<b>0</b>		
<b>(B)</b>	<b>Total Public Shareholding (B) = (B)(1)+(B)(2)</b>	<b>0</b>	<b>0</b>	<b>0</b>		
	<b>TOTAL (A)+(B)</b>	<b>0</b>	<b>0</b>	<b>0</b>		
<b>(C)</b>	<b>Shares held by Custodians and against which Depository Receipts have been issued</b>					
	<b>GRAND TOTAL (A)+(B)+(C)</b>	<b>0</b>	<b>0</b>	<b>0</b>		

**Changes in Capital**

	Equity		Preference		Remarks
	Nos.	Rs.	Nos.	Rs.	
New Issues / ESOPs					
Bonus Issue					
Forfeiture					
Buy back					
Redemption					

The shares of the Company may be held by the promoters of the company, government (Central and/or State(s)), bank(s) / financial institution(s), mutual funds, bodies corporate, directors and others. The shareholding pattern depicts the contribution of each of these in the total shares issued by the company.

**Compliance Inputs**

- Memorandum and Articles of Association
- Minutes of Share Transfer Committee in case of shares held and transferred in physical form
- Board Resolution approving the alteration of capital
- Approval of the Company in general meeting by an ordinary resolution for the alteration
- E-Form No. 2
- E-Form No. 5 and E-Form No. 23 (if the articles are amended), filed with the ROC
- Annual Return filed with the Registrar
- Audited Balance Sheet of the Company
- Returns / Documents filed with the Stock Exchanges in accordance to the Listing Agreement.

**PARA 3** *As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB.No. 49/13.05.000/2008-09 dated February 12, 2009*

*"3. The company has altered the following provisions of*

- (i) The Memorandum of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose.*



- (ii) *The Articles of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose"*

### **ALTERATION IN THE MEMORANDUM OF ASSOCIATION WITH RESPECT TO CHANGE IN REGISTERED OFFICE FROM ONE STATE TO ANOTHER AND OBJECTS CLAUSE**

#### **Compliance Inputs**

- Resolution, copy of altered Memorandum & Articles of Association for change in registered office of the company/ alteration of objects clause/ or any other clause of Memorandum & Articles of Association, e-form no. 18 filed with ROC;
- Certified true copy of the special resolution along with the certified true copy of the explanatory statement filed with the Registrar in e-form no. 23;
- Petition filed before the Company Law Board<sup>1</sup>, for confirmation of the alteration of Memorandum relating to change of place of the company's registered office from one State to another;
- Certified true copy of the order of the Company Law Board<sup>1</sup> confirming the Alteration of Memorandum in respect of registered office of the company together with the printed copy of the Memorandum as altered;
- Certificate of registration issued by the Registrar;
- Minutes of Board Meetings;
- Notice and Minutes of General Meeting;
- Copy of Form 18 filed with the Registrar required for change in registered office of the company.

#### **Checklist**

- (a) Check whether the Board of directors had passed a resolution for change in registered office of the company/ alteration of object clause/ alteration of other clause;
- (b) Check whether the Board had called a general meeting and necessary special resolution has been passed at the said meeting;
- (c) Check whether a certified true copy of the special resolution along with the certified true copy of the explanatory statement was filed with the Registrar in e-form no. 23, within thirty days from the date of passing of the resolution;
- (d) Check whether a petition has been filed before the Company Law Board<sup>1</sup>, for confirmation of the alteration of Memorandum relating to change of place of the company's registered office from one State to another;

---

1. Power transferred to the Central Government from the commencement of the Companies (Second Amendment) Act, 2002.

- (e) Check whether a certified true copy of the order of the Company Law Board (CLB)<sup>1</sup> confirming the Alteration of Memorandum in respect of registered office of the company together with the printed copy of the Memorandum as altered was filed with the ROC of each State;
- (f) Check whether the Registrar of each State registered the change (wherever the ROC has been appointed) and issued the Certificate of Registration under his hand;
- (g) Check whether every copy of the memorandum issued after the date of alteration reflects such alteration.

**SHIFTING OF REGISTERED OFFICE FROM A PLACE UNDER THE JURISDICTION OF ONE ROC TO A PLACE UNDER THE JURISDICTION OF ANOTHER ROC WITHIN THE SAME STATE**

**Compliance Inputs**

- Copy of special resolution passed in the general meeting for shifting its registered office from a place under the jurisdiction of one ROC to a place under the jurisdiction of another ROC, within the same State;
- Copy of application in e-form no. 1AD to the Regional Director for confirmation of special resolution including advertisement in newspaper(s);
- Copy of confirmation order of the resolution passed by RD;
- Report of registration issued by the ROC.

**Checklist**

- (a) Check whether the company has passed a special resolution in the general meeting for shifting its registered office from a place under the jurisdiction of one ROC to a place under the jurisdiction of another ROC, within the same State;
- (b) Check whether the company has made application in e-form no. 1AD to the Regional Director for confirmation of special resolution;
- (c) Check whether the RD had passed the confirmation order of the resolution within four weeks from the date of receipt of the company's application;
- (d) Check whether the company has filed with the ROC, from whose jurisdiction it proposes to shift the registered office, a copy of the confirmation order of the Regional Director along with the printed copy of the memorandum as altered within 2 months from the date of confirmation by the Regional Director;
- (e) Check whether the ROC from whose jurisdiction Registered Office has been shifted, has registered the documents and certified the registration under his hand within one month from the date of filing of such documents.

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1. Power transferred to the Central Government from the commencement of the Companies (Second Amendment) Act, 2002.

**ALTERATION OF THE MEMORANDUM WITH RESPECT TO NAME CLAUSE****Compliance Inputs**

- Certified true copy of the special resolution along with the relevant explanatory statement and the letter issued by the Registrar of Companies making the new name available with the company;
- Fresh Certificate of Incorporation issued by ROC incorporating the alterations consequent to change of name;
- Copy of Form 23, 1A and 1B filed with the Registrar;
- Minutes of the Board Meeting;
- Notice & Minutes of General Meeting.

**Checklist**

- (a) Check whether the company had obtained the availability of new name from the Registrar of Companies;
- (b) Check whether the Board of Directors had called and held the general meeting within sixty days of the date of Registrar's letter intimating the availability of name;
- (c) Check whether the company has passed the special resolution for the change of name and obtained approval of the Central Government (Registrar of Companies) in this respect;
- (d) Check whether the company has filed with the Registrar of Companies certified true copy of the special resolution along with the relevant explanatory statement in e-form 1B and the letter issued by the Registrar of Companies making the new name available with the company;
- (e) Check whether the ROC has issued a fresh Certificate of Incorporation incorporating the alterations consequent to change of name;
- (f) Check whether copies of memorandum have been duly altered;
- (g) Check whether the name has been painted/affixed/printed on the name board, business letters, bill heads, Memorandum and Articles; and
- (h) Check whether new common seal has been adopted by the Board.

**ALTERATION OF MEMORANDUM WITH RESPECT TO SHARE CAPITAL****Compliance Inputs**

- Memorandum and Articles of Association
- Board Resolution approving the alteration of capital
- Approval of the Company in general meeting by an ordinary resolution for the alteration
- E-Form No. 2
- E-Form No. 5 and E-Form No. 23 (if the articles are amended), filed with the ROC

- Annual Return filed with the Registrar
- Audited Balance Sheet of the Company
- Returns filed with the Stock Exchanges

### Checklist

- (a) Check whether the Articles of Association authorise the alteration of share capital;
- (b) Check whether the Board of directors have passed a resolution approving the alteration of capital as above;
- (c) Check whether the company had called and held the general meeting and obtained approval of the company in general meeting by an ordinary resolution for the alteration;
- (d) Check whether the company has filed e-form no. 5 and e-form no. 23 (if the articles are amended), with the ROC;
- (e) Check whether copies of Memorandum and Articles have been altered.

### ARTICLES OF ASSOCIATION

#### Compliance Inputs

- Board resolution approving the alteration of articles;
- Approval of the company in general meeting by a special resolution for the alteration;
- Copy of the special resolution containing the amendments to the Articles of Association along with e-form no. 23 filed with the ROC.

#### Checklist

- (a) Check whether the Board of Directors have passed a resolution approving the alteration of articles;
- (b) Check whether the company had called and held the general meeting and obtained approval of the company in general meeting by a special resolution for the alteration;
- (c) Check whether copy of the special resolution containing the amendments to the Articles of Association along with e-form no. 23 have been duly filed with the ROC within 30 days, and;
- (d) Check whether the alteration had been duly incorporated in the Articles.

**PARA 4** *As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009*

*"4. The company has entered into transactions with business entities in which directors of the company were interested as detailed in Annexure....."*



The Company / its subsidiary ..... (names) entered on ..... (date) into materially significant related party transaction(s), the details of which are given as under, with its promoter(s) / the director(s) ..... (Names), ..... (Name) officer holding the position of ..... in the management (Name)

.....

.....

.....

The quantum of related party transaction(s) in rupee value terms is \_\_\_\_\_.

### Compliance Inputs

- Register of Particulars of Contracts in which Directors are Interested maintained under Section 301 of the Companies Act, 1956
- Disclosure in Annual Accounts relating to Related Party Transactions as per AS-18
- Minutes of Board Meeting and / or General Meeting
- Details of Sole selling agents (Section 294AA of the Companies Act, 1956)

### Checklist

- (a) Check whether the register is being properly maintained by entering separately particulars as prescribed under sub-section (1) of Section 301 of the Companies Act, 1956 of all contracts or arrangements to which Section 297 or Section 299 applies;
- (b) Check whether the names of the directors voting for or against the contract or arrangement and the names of those remaining neutral are recorded;
- (c) Check whether entries have been made within 7 days from the date on which contract or arrangement was made;
- (d) If the company's paid-up share capital is rupees one crore or more, check whether the previous approval of the Central Government has been obtained for entering into contracts;
- (e) Check whether the register specifies in relation to each director the names of firms and bodies corporate of which notice has been given by him under Section 299(3) of the Companies Act, 1956;
- (f) Check whether the register has been signed by the directors present at the Board meeting following the meeting in which the contracts were considered;
- (g) Where the above contracts and/or arrangements have been approved by members in their general meeting, check whether the register is maintained and signed in accordance with the terms of the resolution thereat; and

- (h) Check whether the register is maintained at the registered office and is kept open for inspection and extracts and copies are permitted to be taken or are given to the members in the same manner and on payment of the same fee as in the case of Register of members;
- (i) Board Resolution for contracts u/s 297 of the Companies Act, 1956.

**PARA 5 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB.No. 49/13.05.000/2008-09 dated February 12, 2009**

*"5. The company has advanced loans, given guarantees and provided securities amounting to Rs. .... to its directors and/or persons or firms or companies in which directors were interested, and has complied with Section– 295 of the Companies Act, 1956."*

**Loans to Directors (except housing loans)**

Name of Director	Maximum loans advanced from the date of last Reporting & (date)	Current Loans Advanced (Rs.)	Guarantees Given (Rs.)	Securities Provided (Rs.)
Shri/Ms. ....				
Shri/Ms. ....				
Shri/Ms. ....				

**Loans to Relative/Firms/Companies in which Directors are interested**

Name of the relative(s) / firms / Companies	Nature of Relationship	Name of Director (s) Interested	Loans Advanced (Rs.)	Guarantees Given (Rs.)	Securities Provided (Rs.)
Shri/Ms./M/s. ....		Shri/Ms. ....			
Shri/Ms./M/s. ....		Shri/Ms. ....			
Shri/Ms./M/s. ....		Shri/Ms. ....			

**Compliance Inputs**

- Relevant ledger accounts.
- Government Approval (for Public Company)
- List of Companies in which director holds 25% or more voting power
- Resolution u/s 292 of the Companies Act, 1956

**Checklist**

Check whether provisions of section 295(2) of the Companies Act, 1956 are applicable. If applicable:

- (a) Check whether any loan has been made to
  - (i) any director of the company or its holding company,
  - (ii) any partner or relative of any such director,
  - (iii) any firm in which any such director or relative is a partner,
  - (iv) any private company of which any such director is a director or a member,
  - (v) any body corporate in which 25% or more voting power is exercised by one or more such directors of the company,
  - (vi) any body corporate whereof, the Board, managing director or manager are accustomed to act in accordance with directions or instructions of the Board or any director(s) of the lending company.
- (b) Check whether the previous approval of the Central Government as per section 295 of the Companies Act, 1956 (except housing-loan to a managing director, as per the guidelines issued by the Central Government) has been obtained.

*Note :* (1) 'Relative' or 'close relative' means relative as defined in Section 6 of the Companies Act, 1956.

- (2) Provisions of Section 295 of the Companies Act, 1956 are not applicable to a private company unless it is subsidiary of a public company.

**PARA 6** *As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009*

*"6. The Company has made loans and investments; or given guarantees or provided securities to other business entities as detailed in Annexure....and has complied with the provisions of the Companies Act, 1956."*

**Loans to other Business Entities**

Name of Company	Loans Advanced (Rs.)	Guarantees Given (Rs.)	Securities Provided (Rs.)
M/s. ....			
M/s. ....			
M/s. ....			

**Compliance Inputs**

- Board resolutions passed with the consent of all the directors present at the meeting;



- Register maintained in this regard as per the provisions of Section 372A(5) of the Companies Act, 1956;
- Copy of the special resolution filed with the ROC alongwith e-form 23;
- Register showing the particulars in respect of every investment or loans or security or guarantee maintained in this regard as per the provisions of Section 372A(5) of the Companies Act, 1956.

### Checklist

- (a) Check whether provisions of Section 372A of the Companies Act, 1956 are applicable [refer Section 372A(8)]. If provisions of Section 372A are applicable, check whether the aggregate of the loans made, guarantees given, securities provided or investments made by the company are within the limits of sixty per cent of its paid-up share capital and free reserves, or one hundred per cent of its free reserves, whichever is more as prescribed under Section 372A.
- (b) Check that :
  - (i) Board resolutions were passed with the consent of all the directors present at the meeting;
  - (ii) the details regarding the transaction were entered chronologically in the Register maintained in this regard as per the provisions of section 372A(5), within 7 days of the transaction(s);
  - (iii) the company has complied with the guidelines if any issued by the Central Government under sub-section (7) of Section 372A.
  - (iv) where the company has defaulted in repayment of loan instalments or payment of interest thereon: if so, whether the company has secured prior approval of the public bank(s) / financial institution(s)
- (c) If the aggregate has exceeded the prescribed limits:
  - (i) Check whether Board resolutions were passed unanimously approving the impending transaction subject to members' previous approval at general meeting;
  - (ii) Check whether general meeting(s) (AGM or EGM) have been held and specific special resolutions have been passed stating the limits, particulars of body(ies) corporate in which the investment is proposed to be made or loan or security or guarantees to be given, the purpose and the specific source of funding etc.;
  - (iii) Check that no omnibus special resolution(s) have been passed;
  - (iv) Check whether the company has filed a copy of the special resolution alongwith e-form 23 with the Registrar within 30 days of passing of such resolution;
  - (v) In the case of guarantees given by the Board of directors without the authorisation of special resolution(s) check that :
    - exceptional circumstances existed which prevented the company from obtaining the resolution;

- the Board passed a resolution authorising the same in accordance with the provisions of Section 372A of the Companies Act, 1956;
  - the Board resolution has been confirmed within 12 months at the earliest general meeting of the company;
  - notice of such general meeting (whether annual or extraordinary) indicated clearly the specific limits, the particulars of body(ies) corporate for which the guarantee was given etc.
- (d) In the case of loans, check whether the interest rate at which it was made was not lower than the prevailing bank rate as prescribed under Section 49 of the Reserve Bank of India Act, 1934;
- (e) Check whether the details regarding the transaction(s) were entered chronologically in the register maintained in this regard as per the provisions of section 372A(5) of the Companies Act, 1956, within 7 days of the transaction(s).
- (f) Check whether the register showing the particulars in respect of every investment or loans or security or guarantee is kept at the registered office of the company.

**PARA 7 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"7. The amount borrowed by the Company from its directors, members, financial institutions, banks and others were within the borrowing limits of the Company. Such borrowings were made by the Company in compliance with applicable laws. The break up of the Company's domestic borrowings were as detailed in Annexure..... :"*

**Format of Annexure ...**

		<i>Amount due for Repayment</i>
Borrowing Limit of the Company vide Board / General Meeting Resolution no. .... dated ....	Rs. ...	
Amount borrowed from Directors		
Shri/Ms. .... Rs. .... @ ..... % (rate of interest)		Rs.
Shri/Ms. .... Rs. .... @ ..... % (rate of interest)		Rs.
	Total	Rs. ...
Amount borrowed from Members		
Shri/Ms. ....Rs. .... @ ..... % (rate of interest)		Rs.
Shri/Ms. ....Rs. .... @ ..... % (rate of interest)		Rs.
Shri/Ms. ....Rs. .... @ ..... % (rate of interest)		Rs.
	Total	Rs. ...

## Amount borrowed from Public

Shri/Ms. ....Rs. .... @ ..... % (rate of interest)			Rs.
Shri/Ms. ....Rs. .... @ ..... % (rate of interest)			Rs.
Shri/Ms. ....Rs. .... @ ..... % (rate of interest)			Rs.
	Total	Rs. ...	Rs.

Amount borrowed from Bank(s) /  
financial institution(s)

M/s. ....Rs. .... @ ..... % (rate of interest)			Rs.
M/s. ....Rs. .... @ ..... % (rate of interest)			Rs.
M/s. ....Rs. .... @ ..... % (rate of interest)			Rs.
	Total	Rs. ...	Rs.

## Amount borrowed from Banks

M/s. ....Rs. .... @ ..... % (rate of interest)			Rs.
M/s. ....Rs. .... @ ..... % (rate of interest)			Rs.
M/s. ....Rs. .... @ ..... % (rate of interest)			Rs.
	Total	Rs. ...	Rs.

## Amount borrowed from Others

	(Rs.)		
Shri/Ms./M/s. ....Rs. .... @ ..... % (rate of interest)			Rs.
Shri/Ms./M/s. ....Rs. .... @ ..... % (rate of interest)			Rs.
	Total	Rs. ...	Rs.
	Grand Total	Rs. ...	Rs.

**Compliance Inputs**

In case of Private Company

- Articles of Association
- Balance Sheet

**In case of Public Company**

- Memorandum and Articles of Association with respect to the powers of the company to borrow money and to charge the assets of the company;
- Minutes of the meeting of the Board at which the power to issue debentures has been exercised;
- Minutes of the meeting of the Board at which the power to borrow money, otherwise than on debentures, has been exercised;
- If the power to borrow money otherwise than on debentures has been delegated to a committee of directors or managing director or manager or any other principal officer of the company or in the case of a branch office, principal officer of the branch office, if the delegation was made at the meeting of the Board and the resolution delegating

the power specified the total amount outstanding, at any time, up to which the money may be borrowed by the delegatee;

- If the total amounts borrowed (apart from temporary loans obtained from the company's bankers in the ordinary course of business) exceed the aggregate of the paid-up capital of the company and its free reserves, resolution passed by the shareholders and the total amount specified therein upto which moneys may be borrowed by the company;
- E-Form No. 23 filed with the ROC under Section 192(4)(ee)(i) of the Companies Act, 1956;
- Balance Sheet

### Checklist

#### In case of Private Company

Check whether there are any restrictions on the amount of borrowings contained in the Articles of Association of the company. If yes, check whether borrowings are in accordance with the provisions contained in the Articles.

#### In case of Public Company

- (a) Check whether the company has defaulted in complying with the provisions of Section 58A of the Companies Act, 1956;
- (b) Check whether the Memorandum and Articles contain provisions with respect to the powers of the company to borrow money and to charge the assets of the company;
- (c) Check whether the power to issue debentures has been exercised at the meeting of the Board;
- (d) Check whether the power to borrow money, other than on debentures, has been exercised at the meeting of the Board;
- (e) Check whether the power to borrow money other than on debentures has been delegated to a committee of directors or managing director or manager or any other principal officer of the company or in the case of a branch office, principal officer of the branch office, if the delegation was made at the meeting of the Board and the resolution delegating the power specified the total amount outstanding, at any time, up to which the money may be borrowed by the delegatee;
- (f) Check whether the total amounts borrowed (apart from temporary loans<sup>2</sup> obtained from the company's bankers in the ordinary course of business) exceed the aggregate of the paid-up capital of the company and its free reserves, if so, consent of the members in general meeting has been obtained. Verify the resolution passed by the shareholders and the total amount specified therein upto which moneys may be borrowed by the directors;

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2. Cash Credit, overdrafts, pre-shipment/post-shipment export credit upto one year, short term *ad hoc* working capital finance

- (g) Check whether e-form no. 23 has been filed with the ROC under Section 192(4)(ee)(i) of the Companies Act, 1956.

**PARA 8 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"8. The Company has not defaulted in the repayment of public deposits, unsecured loans, debentures, facilities granted by banks, financial institutions and non-banking financial companies."*

Total Public Deposits raised	Rs. ....
of the above,	
Repaid	Rs. ....
Outstanding of this, default in respect of ____	Rs. ....
Depositors aggregating	Rs. .... / Nil
Total unsecured loans raised	Rs. ....
of the above,	
Repaid	Rs. ....
Outstanding of his, defaulted in respect of ____	Rs. ....
Depositors aggregating	Rs. .... / Nil

The Company is not under CIBIL Defaulters' List and/or RBI Caution List

**Compliance Inputs**

- Register of Deposits
- Register of Loans

**PARA 9 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"9. The Company has created, modified or satisfied charges on the assets of the company as detailed in Annexure.... Investments in wholly owned Subsidiaries and/or Joint Ventures abroad made by the company are as detailed in*

**Format of Annexure**

S.No.	Description of Asset	Cost of Acquisition of the Asset (Rs.)	Depreciated Value of Asset (Rs.)	Amount of Charge (Rs.)	Charge Holder	Nature of Charge	Whether created, modified or satisfied and date thereof	Document number/ Charge Id	Date	Remarks
1.					M/s. ...					
2.					M/s. ...					
3.					M/s. ...					

*Annexure ..... ”***Compliance Inputs**

- Copy of e-form no. 8 duly signed by the company as well as the charge-holder and along with the original/certified copy of the instrument, filed with the ROC;
- Copy of e-form no.10 filed with the Registrar;
- Particulars of modification of charges filed with the ROC in e-form no.8;
- A copy of the instrument creating/modifying charge/a copy of debenture of the series, if any, required to be registered;
- Copy of e-form no.17 filed with the ROC upon satisfaction of the charge;
- Endorsed copies of documents obtained from the ROC in regard to the creation/modification/satisfaction of charge;
- Copies of the instruments creating/modifying charges.

**Checklist**

- (a) Check whether the charge falls within any one of the categories of registrable charges as provided in sub-section (4) of Section 125 of the Companies Act, 1956;
- (b) Check whether the prescribed particulars of the charge requiring registration were filed with the ROC in e-form no. 8 duly signed by the company as well as the charge-holder and along with the original/certified copy of the instrument, if any, within 30 days after the date of its creation or within the time permitted by the ROC under proviso to sub-section (1) of Section 125 of the Companies Act, 1956;
- (c) In case of issue of debentures of a series, if there has been any charge to the benefit of debenture holders of that series, check whether the required particulars have been filed with the Registrar in e-form no.10 within 30 days from the date of execution of or the modification of the trust deed;
- (d) In case commission, allowance, discount is paid or made in consideration for subscribing, etc., to debentures, check whether the forms included particulars of such commission, etc.;
- (e) Check whether abstract of registration is duly endorsed on every debenture or certificate of debenture stock issued, the payment of which is secured by the charge registered;
- (f) Check whether particulars of modification of charges were filed in e-form no. 8 duly signed with the ROC within 30 days of the modification or within the extended period;
- (g) Check whether a copy of the instrument creating/modifying charge/

a copy of debenture of the series, if any, required to be registered was kept at the registered office;

- (h) Where payment or satisfaction of charge registered has been effected in full, check whether intimation thereof has been sent to the ROC in e-form no.17 duly signed, by the company as well as the charge-holder within 30 days from the date of such payment or satisfaction (section 138 of the Companies Act, 1956);
- (i) Check whether Register of charges has been maintained and kept open for inspection;
- (j) Check whether the creation/modification/satisfaction of charge has been registered by the ROC and endorsed copies of documents have been obtained;
- (k) In case of delay/omission/mis-statement in filing particulars of charge created/modified or issue of debentures of a series or intimation of satisfaction of charge, to the ROC check whether a petition has been made to the Company Law Board in accordance with the Company Law Board (CLB) Regulations, 1991 and CLB<sup>3</sup> order obtained and certified copy of such order has been furnished to the ROC along with e-form no. 21; and
- (l) Check whether instruments creating/modifying charges are kept open for inspection as prescribed.

**PARA 10 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"10. Principal value of the forex exposure and Overseas Borrowings of the company as on ..... are as detailed in the Annexure under"*

**Format of Annexure ...**

S. No.	Forex Exposure of the Company	Currency	Equ. Amount (US\$ Million)
(1)	(2)	(3)	(4)
A.	Funded Exposure		
1.	Foreign Currency Packing Credit		
2.	Foreign Currency Post Shipment Credit		
3.	External Commercial Borrowings		
4.	FCCB		

3. Power transferred to Central Government from the commencement of the Companies (Second Amendment) Act, 2002.



(1)	(2)	(3)	(4)
5.	ADR/GDR etc.		
6.	Other Loans, if any – Please specify		
	(a) Suppliers Credit		
	(b) Buyers Credit		
	(c)		
	(d)		
	Total Funded Exposure		
7.	Non Fund Based Exposure		
	Of which :-		
1.	Import Letters of credit opened		
2.	Import Letters of credit accepted		
3.	Guarantees Issued		
4.	Standby letters of Credit		
5.	Others, if any – Please specify		
	(a)		
	(b)		
	(c)		
	Total Non Funded Exposure		
C.	Derivatives		
	(i) Plain Vanilla Contracts		
	1 Forex Forward Contracts		
	2 Interest Rate Swaps		
	3 Foreign Currency Options		
	4 Any other Contracts – Please Specify		
	(ii) Complex Derivatives		
	1 Contracts involving only interest rate derivatives		
	2 Other Contracts including those involving FC derivatives		
	3 Any other derivatives – Please specify		
	(a)		
	(b)		
	(c)		
	Total Derivative Exposure		
	Grand Total of all Exposures		

**Unhedged Foreign Currency Exposures of the Company :  
Currency wise**

<i>S. No.</i>	<i>Type of Exposure</i>	<i>Amount (US\$ Million)</i>	
1	Short Terms ( viz. < 1 year)		
	(a) Long Positions		
	(b) Short Positions		
	(c) Net Short term Exposures (a - b)		
2	Long Term ( viz. > 1 year)		
	(a) Long Positions		
	(b) Short Positions		
	(c) Net Short term Exposures (a - b)		
3	Overall Net Positions ( 1 – 2) for each currency (Please give overall Net Position in this format for each currency)		
4	Overall Net Position across all currencies		
		<i>Currency</i>	<i>Amount</i>
	Total Forex Exposure of the Company		
	Fund Based Exposure		
	Non-Fund Based Exposure		
	Total Borrowing Limit of the Company		
	External Commercial Borrowings of the Company		
	Borrowing limit of the Company	Currency	Amount (Rs.)
	Amount borrowed from Overseas Directors		
	Shri/Ms. ...		
	Shri/Ms. ...		
	Amount borrowed from Overseas Members		
	Shri/Ms. ...		
	Shri/Ms. ...		
	Amount borrowed from Overseas Public		
	Shri/Ms. ...		
	Shri/Ms. ...		

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Amount borrowed from Foreign Bank(s) /  
financial institution(s)

M/s...

M/s...

---

Amount borrowed from Foreign banks

M/s...

M/s....

---

Amount borrowed from others

M/s...

Credit Linked Notes

---

Grand Total

---

Whether approval of RBI required for the above : Yes / No

If yes, date when approval was obtained \_\_\_\_\_ (date) vide Reference No.....

**Illustrative List of Foreign Currency Exposures with  
Source for Verification**

<i>Type of Exposure</i>	<i>Source for Verification</i>
<b>1. Packing credit in Foreign currency</b>	<ul style="list-style-type: none"> <li>a. Packing credit loan ledger supported by Bank Advice for each disbursement.</li> <li>b. Internal MIS including Trial Balance.</li> </ul>
<b>2. Post shipment credit in Foreign Currency</b>	<ul style="list-style-type: none"> <li>a. Post shipment loan Ledger.</li> <li>b. Bill-wise advise from bank.</li> <li>c. Trial Balance/Internal MIS.</li> <li>d. Export Collection Bills</li> <li>e. Advance against FOBCs</li> </ul>
<b>3. Foreign Currency Loans</b>	<ul style="list-style-type: none"> <li>a. Last Audited Balance Sheet.</li> <li>b. Bank Advise for disbursement of the loan</li> <li>c. Loan Ledger</li> <li>d. Statement of Account from Lender (Bank)</li> </ul>
<b>4. External Commercial Borrowings</b>	<ul style="list-style-type: none"> <li>a. Form 83 under FEMA, 1999 (Reporting of loan agreement details)</li> <li>b. Form ECB-2 under FEMA,</li> </ul>

<i>Type of Exposure</i>	<i>Source for Verification</i>
	1999 (Details of actual transaction of Foreign Currency Loan/Financial Lease other than short-term Foreign currency Loans)
	c. Last Interest fixation notification from the Lender
	d. Loan Ledger
<b>5. Foreign Currency Convertible Bond (FCCB)</b>	a. Issuance Approval (if applicable)
	b. Form ECB-2 (if applicable)
	c. Board Memorandum copy on FCCB reporting
	d. Information filed with Stock Exchange
<b>6. American Depository Receipt (ADR)</b>	a. Board Resolution for issuance of ADR
	b. Copy of listing agreement filed with NYSE or NASDAQ
	c. Statement from RTA
<b>7. Global Depository Receipt (GDR)</b>	a. Board Resolution for issuance of GDR
	b. Statement from RTA
	c. Copy of listing arrangement with overseas Stock Exchange(s).
<b>8. Loans from Non Residents</b>	
a. J.V. Partner	a. Copy of loan agreement
b. Promoter/Director	b. Copy of FIRC
c. Others (In all cases:)	c. Ledger account extract
<b>9. Imports</b>	
(i) Under LC where the Issuing Banks Nostro A/c has already been debited	a. Copy of LC
	b. Copy of advance documents received directly from overseas seller
	c. Bank Intimation Letter
(ii) Not under LC but under DA Terms –accepted by the bank	a. Copy of Acceptance

<i>Type of Exposure</i>	<i>Source for Verification</i>
or company for payment on a fixed future date.	b. Bank Intimation
(iii) Buyers credit/Suppliers credit arranged directly by the company	a. Copy of LC b. Copy of Invoice c. Term sheet of the overseas Lender (overseas Bank) d. Import Collection Bills
<b>10. Foreign currency on Hand (maximum equal to USD 2000=00)</b>	a. Physical counting b. Reasons for keeping the foreign currency
<b>11. Balance in EEFC A/c(Exchange Earners' Foreign Currency Account)</b>	a. Statement of Account from the Bank b. EEFC A/c Reconciliation Statement
<b>12. Balances in Bank Accounts held abroad</b>	a. General Permission or Special Permission copy b. Statement of Account from the Overseas Bank c. Reconciliation Statement d. Ledger extract from Company's books
<b>13. Investments made abroad</b>	a. General or Specific approval copy b. Copy of document evidencing investment c. Ledger extract
<b>14. Loans extended in Foreign Currency</b>	a. General or Special Permission copy b. Copy of Loan Agreement c. Proof of remittance of foreign currency d. Ledger extract of Loan Account
<b>15. Advance payments received against exports (exports not taken place)</b>	a. Copy of Purchase or Sale contract as the case may be b. Copy of FIRC c. If credited to EEFC A/c cross reference so as to avoid double counting
<b>16. Security Deposits received from Dealers / Distributors abroad</b>	a. Copy of appointment letter b. Copy of FIRC c. Copy of Ledger extract

<i>Type of Exposure</i>	<i>Source for Verification</i>
<b>17. Security Deposit paid for overseas officer but parked in Indian Books in respect of</b> (i) Premises (ii) Other utilities (iii) Refundable Regulatory Payment	a. Copy of relevant agreement b. Bank Advice copy for remittance c. Ledger extract
<b>18. Capital/Loans/Advances extended to overseas branches or Joint Ventures (JVs) or Wholly Owned Subsidiaries (WOSs).</b>	a. Copy of agreement for each loan b. Proof of disbursement c. Ledger extract
<b>19. Forward Contracts Booked [Both Purchases and Sales]</b>	a. Copy of Contract Note b. Verification of underlying (i.e. export bill, export LC, Import bill, Import LC, Purchase Order, Sales Contract etc.)
<b>20. Bid Bonds</b> <b>Performance Guarantees</b> <b>Retention Money Guarantees</b> <b>Advance Payment Guarantees</b> <b>or any</b> <b>Other Guarantees issued and outstanding</b>	a. Copy of each Guarantee with supporting documents b. Bank Advice or Bank Correspondence for each instrument
<b>21. Derivative Transactions</b> — Options — Foreign Currency Swaps etc. — Exchange Traded Currency Futures (Broker/Bank Contract Note for each deal)	a. Term sheet for each contract b. Board Resolution
<b>22. Interest Rate Swaps and Forward Rate Agreements</b>	If any one leg is a foreign currency interest rate benchmark, then a. Certified copy of the agreement b. Term Sheet c. Last Payment/Receipt details d. Liability computation for broken period for each Interest Rate Swap/Forward Rate Agreement (IRS/FRA) deals.
<b>23. Advance remittance towards import of merchandise/capital goods</b>	
<b>24. Estimated contracts entered into forex future deals.</b>	

**Compliance Inputs**

- Relevant Ledger Accounts
- Bank specific policies/guidelines
- FEMA 1999 – Notifications issued by Reserve Bank & Rules framed by Government of India
- Guidelines issued by Industrial & Export Credit Department (IECD)/ Department of Banking Operative & Development (DBOD)/DBOS/ Foreign Exchange Department (FED) of the Reserve Bank
- Foreign Trade (Development and Regulation) Act, 1992
- Foreign Trade Policy 2004-09
- Foreign Contribution Regulation Act, 1976
- The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- Uniform Customs and Practice for Documentary Credits (UCPDC ICC 600)
- FEDAI Rules
- SEBI guidelines
- ODA Guidelines
- Investment abroad – both Assets side and Liabilities side
- Accounting Standards (AS 11, IAS 39, FASB, GAAP norms).

**PARA 11 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*“11. The Company has issued and allotted the securities to the persons-entitled thereto and has also issued letters, coupons, warrants and certificates thereof as applicable to the concerned persons and also redeemed its preference shares/debentures and bought back its shares within the stipulated time in compliance with the provisions of the Companies Act, 1956 and other relevant statutes”*

**Compliance Inputs**

- Debenture Trust Deed issued in case of secured debentures.
- Register of Issue, registration, transfer of shares /debentures.
- All corporate actions of allotment such as IPO, rights, bonus, Compulsorily Convertible Preference Shares (CCPS), preferential allotment and buyback.
- SEBI (DIP) Guidelines.
- E-Form No. 5 filed with the ROC.

- Books of Accounts.
- Order, if any, of the Company Law Board with regard to redemption of debentures.

### Checklist for Buy Back

A company may purchase its own shares or other specified securities out of—

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of any shares or other specified securities:

The buy-back may be—

- (a) from the existing security holders on a proportionate basis; or
- (b) from the open market; or
- (c) from odd lots, that is to say, where the lot of securities of a public company whose shares are listed on a recognised stock exchange, is smaller than such marketable lot, as may be specified by the stock exchange; or
- (d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

No company shall directly or indirectly purchase its own shares or other specified securities—

- (a) through any subsidiary company including its own subsidiary companies; or
- (b) through any investment company or group of investment companies; or
- (c) if a default, by the company, in repayment of deposit or interest payable thereon, redemption of debentures, or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institution.

No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 159, 207 and 211 of the Companies Act, 1956.

- (a) Check whether the buy-back is authorised by its articles;
- (b) Check whether special resolution has been passed in general meeting of the company authorising the buy-back;
- (c) Check whether the buy-back is or less than ten per cent of the total paid-up equity capital and free reserves of the company; and such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
- (d) Check whether that no offer of buy-back has been made within a



period of three hundred and sixty-five days reckoned from the date of the preceding offer of buy-back, if any;

- (e) Check whether that the buy-back is of less than twenty-five per cent of the total paid-up capital and free reserves of the company;
- (f) Check whether that the buy-back of equity shares in any financial year does not exceed twenty-five per cent of its total paid-up equity capital in that financial year;
- (g) Check whether that the ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back: "debt" includes all amounts of unsecured and secured debts;
- (h) Check whether all the shares or other specified securities for buy-back are fully paid-up;
- (i) Check the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulation made by the Securities and Exchange Board of India in this behalf;
- (j) Check whether that the notice of the meeting at which special resolution is proposed to be passed is accompanied by an explanatory statement stating —
  - (a) a full and complete disclosure of all material facts;
  - (b) the necessity for the buy-back;
  - (c) the class of security intended to be purchased under the buy-back;
  - (d) the amount to be invested under the buy-back; and
  - (e) the time limit for completion of buy-back.
- (k) Check whether every buy-back is completed within twelve months from the date of passing the special resolution
- (l) Check whether the company before making such buy-back, filed with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form as may be prescribed, and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any.
- (m) Check that no declaration of solvency has been filed with the Securities and Exchange Board of India by the company while its shares are were listed on any recognised stock exchange.
- (n) Check that if the company has bought back its own securities, it has extinguished and physically destroyed the securities so bought-back within seven days of the last date of completion of buy-back.
- (o) Check that where a company completes a buy-back of its shares or

other specified securities under this section, it has not made further issue of the same kind of shares (including allotment of further shares under clause (a) of sub-section (1) of section 81 of the Companies Act, 1956 or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

- (p) Check whether the company has maintained a register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars as may be prescribed.
- (q) Check whether the company, after the completion of the buy-back filed with the Registrar and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed.
- (r) Check that where a company purchases its own shares out of free reserves, then a sum equal to the nominal value of the share so purchased has been transferred to the capital redemption reserve account and details of such transfer have been disclosed in the balance sheet.

#### **Checklist for Issue of Certificates for Shares and other Securities**

- (a) Check whether the company has allotted shares/debentures and entered the names of allottees in the register of members/debentureholders;
- (b) Check whether the company has issued and delivered share certificates as per sections 84 and 113 of the Companies Act, 1956 and the provisions of the Companies (Issue of Share Certificates) Rules, 1960;
- (c) Check whether the company has filed eform 2 – return of allotment with the Registrar;
- (d) Check whether the company has executed Debenture Trust Deed in case of secured debentures;
- (e) Check whether the company has delivered debenture certificates within the prescribed period and in case of delay, CLB Order for extension of time has been obtained;
- (f) Check whether the company has registered transfer and transmission of shares as per Sections 108 to 113 of the Companies Act, 1956;
- (g) Check whether the company has kept in abeyance the registration of transfers in cases of Court-injunction.

#### **Checklist for Redemption of Preference Shares**

- (a) Check whether the provisions contained in Articles of Association have been complied with;

- (b) Check whether the conditions set out in Section 80 of the Companies Act, 1956 have been met;
- (c) Check whether e-form no. 5 has been filed with the ROC within 30 days from the date of redemption.

#### **Checklist for Redemption of Debentures**

- (a) Check whether e-form no. 17 has been filed with the ROC;
- (b) Check whether the company has created a debenture redemption reserve for the redemption of debentures and credited adequate amount from out of the profits until such debentures are redeemed;
- (c) Check that the company has not utilised the debenture reserve except for the redemption of debentures;
- (d) Check whether the company has paid interest and redeemed the debentures in accordance with the terms and conditions of their issue;
- (e) Check whether the company has complied with the order, if any, of the Company Law Board with regard to redemption of debentures.

**PARA 12 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"12. The Company has insured all its secured assets."*

Particulars of Insurance cover obtained by the Company are as under: -

S. No.	Particulars of Asset Insured	Value of Asset (Rs.)	Sum Insured (Rs.)	Risk Covered	Amount of Policy	Insurance Company	Insurance Policy Number
1.						M/s. ....	
2.						M/s. ...	
3.						M/s. ...	

*Note :* Insert a remark, whether all the assets have been insured and provide a list of assets that haven't been insured.

#### **Compliance Inputs**

- Original insurance policies
- Register of Assets
- Collateral Security offered to the lenders

- Stock Statement
- Premium payment receipts

**Checklist for Insurance Policies**

- (a) Verify the original insurance policies and check carefully the details of assets covered by the policy.
- (b) Check that the Company has taken a Policy from a General Insurance Co. registered with IRDA.
- (c) Check the period of the policy. Policies are generally issued for a period of one year. Sometimes, short period policies for less than one year are also issued.
- (d) Generally, Fire Insurance policies cover immovable properties, stocks etc. Earthquake, Terrorism etc. are given as add on covers. Vehicles should have Valid Comprehensive Insurance Policies.
- (e) Check that the sum insured represents the Market value / Replacement value as the case may be (not book value) or else, under insurance will be applicable. Name, address, situation (with Building No. etc.) of the Company should tally with the records.
- (f) Verify the name of the mortgagee.
- (g) Verify any endorsement during the policy period, noting the changes in the sum insured, situation, risk etc.

**Checklist for Compliance of Terms of Insurance**

Check the following in regard to compliance of terms of insurance:

- (a) the company's assets have been insured comprehensively. Where a joint insurance on plant and buildings has been taken, the value thereof has been apportioned in the manner prescribed / approved;
- (b) the insurance policy has been taken in the joint names of the company and the bank(s) / financial institution(s) ;
- (c) the policy has been kept alive for such full value, as has been determined by the bank(s) / financial institution(s) , all premia are being paid on time, and the company has not done any such act as would render the policy void or voidable;
- (d) the policy has been taken from an insurance office of repute, as determined by the bank(s) / financial institution(s); and
- (e) all moneys received under the insurance policies are held in trust for better securing to the bank(s) / financial institution(s) , the payment of all moneys secured under the indenture agreement.

**PARA 13** *As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009*

*"13. The Company has complied with the terms and conditions, set forth by the lending bank/financial institution at the time of availing any facility and also during the currency of the facility."*

### **Compliance Inputs**

— Copy of the Lending Agreement

### **Checklist for Compliance with the terms and conditions set forth by the lending Institution at the time of availing the facility.**

Check the following points to confirm that:

- (a) further funds have not been borrowed from bank(s) / financial institution(s) on hundis, other than from its bankers, without prior consent;
- (b) no donations / contributions have been made to the charitable and other funds, which are not directly related to the business of the borrower or to the welfare of its employees, in excess of the indenture (if any), without the consent of the bank; and
- (c) no merger/consolidation / re-organisation / arrangement / compromise with the creditors/shareholders has been undertaken / permitted without the approval of the bank.

### **Checklist for Operations of the Company**

Check whether the following have been ensured, about the operations of the company:

- (a) the company has not ceased to carry on business, even temporarily;
- (b) any material changes in the operations, including creation of a subsidiary, implementation of expansion programmes, and undertaking any general trading activities have been approved by the bank(s)/financial institution(s);
- (c) the selling/purchasing agency has been given on terms and conditions laid down in the indenture. Where required the existing arrangements have been suitably modified. Specific permission has been taken where agreement is being entered into with the associate concerns of the promoter(s) / director(s) of the company; and
- (d) any arrangements required to be entered into, as per the provisions of the indenture, have been duly made.

**Checklist for Security Offered on the Term Loan**

Verify the following as regards security offered on the term loan, and subsequent acquisition of assets:

- (a) Assets acquired pursuant to the loan agreement are in line with the terms of the sanction;
- (b) Assets purchased from the money advanced / to be advanced, if not brought upon / fixed to the factory premises, have been hypothecated with the bank(s) / financial institution(s) / commercial bank;
- (c) The company has not entered into any arrangement with the creditors, nor has any act or default been committed, as would render the company liable to be taken into liquidation;
- (d) Where guarantees have been furnished, in the event of death of a guarantor, his heirs have not given notice of revocation; and
- (e) In the opinion of the assessors / valuers appointed by the company the value of the security has not become insufficient or depreciated beyond norms prescribed in the indenture.

**Checklist for Default in Payment of Interest / Principal Instalments**

Confirm that in the event of default:

- (a) the consent of the bank(s) / financial institution(s) has been taken, where required, prior to distributing dividends and making interest payment on unsecured loans and deposits; and
- (b) sales tax refunds / sum received from incentive schemes, etc., have been applied towards payment of overdue amounts.

**Checklist for Information submitted to Bank(s)/Financial Institutions**

Verify that the periodical statements required to be submitted to the bank(s)/ financial institution(s), are being furnished on time. The statements may be on the operations of the company/implementation of the project undertaken.

**Checklist for Utilisation of Moneys Advanced**

Ensure that consistency has been maintained in utilisation of moneys advanced to the mortgagor. The following aspects may be specifically examined:

- (a) funds have been utilised for the purposes laid down in the indenture. Where funds have not been so utilised, the requisite permission has been taken;
- (b) requisite conditions laid down to qualify for the outstanding balance of the loan have been fulfilled;
- (c) the drawals from the loan are being kept in a separate Scheduled Bank Account, payments therefrom are being made in the manner laid down in the indenture, the said scheduled bank has foregone its right

to set-off or lien, in respect of the said account, and the mortgagor is maintaining the records pertaining to the said account, as provided in the indenture;

- (d) no part of the loan moneys has been transferred to call, short term, fixed or any other deposits, without prior consent. Where such consent has been obtained, the scheduled bank has foregone its right to set off any amount due from the company, against the deposits, the deposits have been realised on their due dates and the proceeds thereof re-deposited in the special account;
- (e) the expenditure has been financed in the manner provided for in the indenture; and
- (f) any changes / deviations in the time schedule for completion of the project have been made in consultation with the bank(s) / financial institution(s).

### **Checklist for Payment of Liabilities / Dues**

Ensure as regards payment of liabilities / dues that:

- (a) the company has been paying all the ground rents, rates, taxes<sup>4</sup>, dues, duties and outgoings immediately on their becoming due and there is no penalty imposed/adverse remarks by the Regulatory Authorities against the company during the period under review;
- (b) where the company has any account(s) with bank(s) / financial institution(s), guaranteed by Reserve Bank of India, no default has been committed on its maintenance, as would render Reserve Bank of India liable to reimburse the guaranteed amount;
- (c) any prepayments, of any amount other than the term loan and the bank borrowings in the ordinary course of business, have been made with the prior approval, in writing, of the bank(s) / financial institution(s). Any other conditions stipulated under the indenture, have also been complied with; and
- (d) no other bank(s) / financial institution(s) with whom the company has entered into agreements for financial assistance have refused to disburse the loan(s) or any part thereof, nor have they recalled the sums disbursed under their respective loan agreements entered into with it.

### **Checklist for Books of Accounts**

Scrutinise the books of accounts to check that:

- (a) proper books of accounts have been maintained by the company, in consonance with the requirements laid down in the Companies Act, 1956;
- (b) books of accounts have been properly posted up at all times; and
- (c) annual audit of the books of accounts has been conducted in the manner provided for under the Companies Act, 1956, and copies of

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<sup>4</sup> Taxes include income tax, corporation tax, sales tax, provident fund contribution, ESI contribution, etc.

audited accounts have been submitted to the bank(s) / financial institution(s) within six months from the date of closing of the accounts.

### **Checklist for Memorandum / Articles of Association**

Verify that any alteration in the Memorandum/Articles of Association has been made with the prior consent, in writing, of the bank(s) / financial institution(s).

### **Checklist for Directors / Promoters**

Scrutinise the records to ascertain that:

- (a) the shareholdings of the directors have not been substantially varied, nor have the deposits / unsecured loans received from the directors been reduced, without the prior consent of the bank(s) / financial institution(s);
- (b) funds procured from the promoters / directors are only subject to such conditions as are laid down in the indenture;
- (c) all amounts payable on account of any sitting fees, expenses, commissions, and remuneration to nominee directors, have been duly paid;
- (d) no commission has been paid to the promoters, directors, managers or any other persons for furnishing guarantees, counter guarantees, obligations, indemnity or for undertaking any other liability / obligation, without the prior approval of the bank(s) / financial institution(s); and
- (e) prior approval of the bank(s) / financial institution(s) has been taken for the appointment / re-appointment of managing director / whole-time director / chairman / consultants, as regards changes in their terms of appointment, except where these are as per the provisions of the Companies Act, 1956. The appointments, where necessary, have the approval of the Central Government.

### **Checklist for Board Meetings**

Verify that all important matters, specifically required by the bank(s) / financial institution(s), were submitted for decision to the Board of Directors and the meetings thereof were both called and conducted, in the manner laid down in the indenture.

### **Checklist for Technical Experts**

Check whether the provisions contained in the indenture, as regards the appointment of experts, their technical training and any other directions, have been complied with, and the bank(s) / financial institution(s) is/are being duly kept informed of such compliance.

### **Checklist for Licences / Consents**

Ensure that :

- (a) the registration / licenses / renewals required under the Industries



(Development & Regulation) Act, 1951 / FEMA, 1999 and from the Central/State Government/other authorities have been obtained;

- (b) the rights, powers, privileges, concessions, trade marks, patents and licence agreements necessary in the conduct of the business, have been renewed; and
- (c) in case of MSME / SSI unit, the Registration has been renewed;
- (d) pollution Control / Hazardous Waste treatment related permissions have been obtained.

#### **Checklist for Contracts**

Ensure that any strictures as regards agreements for supply of plant and equipment, have been complied with, and competitive tenders have been called for, where required.

#### **Checklist for Legal Proceedings**

Verify, as regards possible legal proceedings, that:

- (a) the bank(s) / financial institution(s) have been intimated of any notices received under any Act, including the application for winding up under the Companies Act, 1956;
- (b) where a receiver has been appointed on any of the properties/business undertaking of the company, or any distress or execution has been allowed to be levied on the mortgaged premises the bank(s) / financial institution(s) has/have been intimated about it; and
- (c) the company is not party to any material litigation with respect to assets acquired under the loan agreement.

#### **Checklist for Takeover of Management**

Verify that no proceedings for winding up have been commenced, nor has any receiver been appointed without the prior consent of the bank(s) / financial institution(s).

#### **Checklist for Financial Position**

Check the financial position to ensure that:

- (a) the company has not put its funds, nor invested them in purchase of shares of any other concern, without the prior approval of the bank(s)/ financial institution(s) as stipulated in the loan agreement;
- (b) no money has been withdrawn from the business, out of the capital or in anticipation of profits, without prior consent of the bank(s) / financial institution(s); and
- (c) proposals to undertake inter-corporate loans or other investments, have the prior approval of the bank(s) / financial institution(s).
- (d) the company has provided adequate provision on depreciation as required u/s 205 of the Companies Act, 1956 in its Book of accounts.

**Note :**

- (1) In case of project under implementation — check whether the margin money has been brought in by the promoters as per the terms of sanction.
- (2) Furnish the details of inflow viz. date, amount, channel (name of bank (s)), etc.
- (3) Check the compliance of the provisions of Section 293 of the Companies Act, 1956 regarding the powers of the Board.

A specimen Sanction Letter covering terms, conditions, covenants and remarks is placed below for reference.

**Specimen sanction letter**

To

\_\_\_\_\_

\_\_\_\_\_

**Relevant Terms, Conditions & Covenants, etc. applicable to the Sanctioned facility(ies)**

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
1. The Company/firm to execute necessary security documents/renewal documents for sanctioned/enhanced limit(s) duly supported by Board resolution and create and register stipulated charges with the authorities specified for the purpose within stipulated time limit before release of sanctioned/enhanced limits.	Self Explanatory
2. Company/firm to have title deeds of the immovable assets released from Term Lenders and re-deposit the same at the Bank as an agent and custodian of First Charge and Second Charge holders.	Self Explanatory
3. Where Company/firm agrees to give second charge favouring the Bank, it has to complete the process as mentioned in serial "___" above and create second charge on block of fixed assets within a period of ___ months (to be as per terms of sanction) to secure the last enhanced limits and the present enhanced limits alongwith loan of Rs. _____ sanctioned	

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
by us outside the consortium.	Self Explanatory
4. Guarantor(s) : All fund based and non fund based facilities to be guaranteed (Joint & Several guarantee) by Mr./ M/s. _____. The firm/ Company shall not pay any guarantee commission to the guarantors.	Self Explanatory
5. The release of credit facilities is also subject to vetting of security documents by the bank's approved advocate and bank's internal procedure of Credit Process Audit. The charges for vetting of the documents by the Bank's advocate are payable by firm/Company.	Self Explanatory
6. Stock / book debt statements are to be submitted at a frequency stipulated by the Bank (monthly/quarterly) alongwith select operational data (MSOD) in bank's prescribed formats. Valuation of stocks to be done at cost/ invoice / market price, whichever is lower.  Non submission of stock/book debts and MSOD statements by 10th (or the date stipulated in sanction) of the succeeding month will attract penal interest @1% p.a. If these statements are not submitted for a continuous period of 3 months, Bank may initiate further action as deemed necessary by the Bank.	6 & 7 combined facilitates — Stock & Book debts statement will facilitate verification of end use of funds given for build up of assets as stipulated  — MSOD facilitates ensuring movement of stocks from RM-WIP-FG-BDS. Helps spot low-nil level of activity if compared with past stock movement  — If these are not commensurate with the funds released, bank may seek reasons for same which can be such as :- advance to suppliers- processors/ stock in transit not declared/ other assets built up /payment of expenses not relating to mfg but not disclosed/moneys advanced to others

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
7. The drawing power in the accounts would be arrived at after deducting the unpaid creditors, outstanding balance, if any, in the accepted DA L/C account. In the case of book debts no drawings would be allowed against book debts on sister concerns, unless specifically agreed to by the bank, and also those which are more than 90/180 days old. Drawings would be allowed based on the QIS returns subject to the availability of drawing powers as mentioned above.	<p>without prior approval/ cash losses being financed etc.</p> <ul style="list-style-type: none"> <li>— Can facilitate random check on valuations/ whether prices assumed are as per prevailing market price/ inflated if quantity wise summaries are available</li> <li>— Quality of debtors, in case of well known companies, can be verified. Movement of debtors on aging is available</li> <li>— LC is a Preferred mode of payment to suppliers since probability of diversion/ siphoning of funds is low – the beneficiaries' business product line is ascertained to verify the product is an input to the manufacturing process / ultimate product of borrower company</li> <li>— LC acceptances outstanding with bank can be cross verified with LC creditors declared and also the material yet to be received under outstanding LCs estimated</li> <li>— Non financing of associates book debts is to check double financing/diversion for</li> </ul>

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
8. Packing Credit will be allowed only against L.C.s opened by acceptable banks and confirmed export orders from approved parties and will be extended for periods not beyond the last shipment date.	<p>other uses since associate's finances are often not subject of detailed scrutiny by this lender</p> <p><b>utilisation of monies</b></p> <ul style="list-style-type: none"> <li>— This is to ensure genuineness of the trade transactions since banks also seek status report on these drawees concerned, independently through D&amp;B.</li> <li>— The EPC tenor is normally matched with the manufacturing cycle of borrower to ensure need based financing.</li> </ul>
9. Bank will obtain status report on drawees before purchase/discount of the bills and such reports will be updated annually; availability of a satisfactory status report shall be a pre-requisite for such purchase/discount of bills.	<ul style="list-style-type: none"> <li>— This is a check to ensure that accommodation bills are not being raised by borrower to avail finance</li> <li>— Prima facie verifies the line of business of drawees which should be in same product line / drawee may be a selling agent</li> <li>— Delayed Payments/ Return of bills acts as a warning signal to lender on problems likely to arise</li> <li>— Return of goods by drawee can indicate rejections due to product deficiencies or delays in dispatches i.e. inability to meet commitments – may</li> </ul>

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
	be a reflection of management problems
10. The firm/company to display bank's hypothecation plate/board at its Unit/business premises indicating that stocks/assets are hypothecated to the Bank.	— To put public on notice of lender's interest in the asset of borrowers.
11. All the assets charged/to be charged to the Bank to be kept fully insured at all times against all risks (FRSD, Burglary, comprehensive risks etc.)and original Insurance cover note /policy in the name of the Bank a/c borrower firm / Company with Bank's Hypothecation clause to be lodged with the Bank.	— This is to ensure that lender's interest is noted and protected in the assets financed with the Insurer & claims will be settled only with the lender/s
12. The company to submit all bills/receipts etc. as applicable to project expenditure. A certificate from bank's approved C.A/Architect/valuer towards expenses incurred on project/progress in implementation of project. Any escalation in the project cost to be met by the promoters/company/firm from their own sources.	<ul style="list-style-type: none"> <li>— To verify end use of funds for financing only those assets as were originally approved</li> <li>— That the pricing of equipments is as per the quotations that may have been obtained originally and that the expenditures are within the budgetted figures</li> <li>— To also verify that the promoter's have brought in their contributions as originally envisaged, in the form and time period stipulated i.e. Form as equity/ quasi equity</li> </ul>
13. The Company/firm to submit copy of statutory permissions/clearances like 'NOC' from Pollution Control Board and ensure for timely renewal of same from time to time.	— To ensure lender's funds are not jeopardised due to disruption of activity on account of non

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
<b>(Only illustrative)</b>	availability / non obtention of / non adherence to any of the statutory prescriptions
14. Inspection will be done on quarterly basis (in rotation by consortium member banks) or as and when required by the bank. The Bank has the right of deputing its officials/ person(s) (like qualified auditors or management consultants or technical experts) duly authorised by the Bank to inspect the unit, assets, books of accounts / records etc. from time to time. Also the Bank may appoint, at its sole discretion, stock/concurrent auditors, valuers, consultants for specific jobs relating to company's/ firm's activities, the cost of which will be borne by the company/firm.	<ul style="list-style-type: none"> <li>— To verify that proper records are being maintained</li> <li>— To verify correctness of data submitted to lender <i>vis-a-vis</i> actuals as per the books</li> <li>— That the drawals with lenders are in fact supported by the physical assets / amounts due from debtors</li> <li>— Verify quality of assets/ debtors</li> <li>— To ascertain disputed debtors/ non moving stocks / obsolete inventory etc.</li> <li>— Detect diversion of funds to others including associates as per bank account of company</li> </ul>
15. Pre shipment and post shipment limits to be secured by WTPCG & WTPSG Schemes of ECGC, with the option to the Bank for obtaining comprehensive ECGC coverage depending upon the risk prevailing in the country where export is being made. Premium payable to ECGC by the Bank in respect of WTPCG policy is to be borne by firm/Company.	Self Explanatory
16. Loan amount of Rs. _____ is repayable in _____ monthly/quarterly/ half yearly instalments of Rs. __ each commencing from __ months after first date of disbursement with an option to pre-	

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
pay with/without prepayment charges. Prepayments will attract additional charges @ ____ (As per terms of sanction).	Self Explanatory
17. Penal interest of 2% p.a. will be levied on the overdue amount for the period account remains overdrawn due to irregularities such as – non payment of interest immediately on application, non payment of instalments within one month of their falling due, reduction in drawing power/limit, excess borrowings due to over limit, devolvement of L/C, invocation of Guarantee etc. If the account continues to be overdrawn for a period of 90 days, the bank may consider initiation of other action also as deemed fit by the bank.	Self Explanatory
18. Any default in complying with terms of sanction within the stipulated time will attract penal interest of 1% p.a. from the date of expiry of such time.	
19. Lead Bank/processing charges of Rs. _____ will be levied annually. Earmarking charges of Rs. _____ p.a. per account for Earmark Limit of Rs. _____ at _____ branch, Documentation charges of Rs. _____ and inspection charges @ Rs. _____ per inspection are payable. WCDL conversion to FCL/ FCL rollover charges as applicable maximum Rs. 25, 000/- per transaction. Out of pocket expenses incurred towards title verification and valuation of property/assets, inspections/ techno-economic appraisal of the project/unit will be recovered separately.	Self Explanatory
20. Commitment charges : A minimum commitment charge of 1% p.a. will be levied on unutilised portion of working capital limits subject to tolerance level of 15% of such limits. Company/firm to intimate in advance about the level of utilisation of the limit through QIS returns. If overall utilisation of fund	



<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
<p>based limits during the year is less than 60% of the sanctioned limit, then commitment charges of 2% p.a. will be recovered and the limits will be pruned down at the time of review.</p>	Self Explanatory
<p>21. In case of default either in the payment of interest, the repayment of the principal amounts as and when due and payable or reimbursement of all costs, charges and the expenses when demanded, you shall pay additional interest at the rate of 2% above the interest rate for the facilities on the overdue interest, costs, charges or expenses and/or from the respective due dates for payment and/or repayment.</p>	Self Explanatory
<p>22. The firm/company is required to submit QIS I, II &amp; III returns. QIS I (showing estimates) is required to be submitted in the week preceding the commencement of the quarter to which it relates, QIS II (showing performance) within six weeks from the close of the quarter to which the statement relates and QIS III (half yearly operating statement) within two months from the close of the half-year. Any delay without specific approval from the bank will attract penal rate of 1% p.a. for the delayed period.</p>	<ul style="list-style-type: none"> <li>— QIS I — estimates of performance as furnished by company based on which release of limit for Working Capital can be regulated. These should also be in tune with annual project in submitted</li> <li>— QIS II – ascertains actuals <i>vis-a-vis</i> projections—in effect verifying end use of funds. Can check diversion of funds</li> <li>— QIS III- profitability statement can be taken to ensure performance/projections during the half-year</li> </ul>
<p>23. CMA data to be submitted at least one month before the due date of review. Any delay without specific approval from the bank will attract penal rate @1% p.a. In case CMA data is not submitted for a continuous period of three months, the bank may take further action as deemed fit by the Bank.</p>	Self Explanatory

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
24. The company/firm to ensure submission of statement of Assets & Liabilities in Bank's format CBD – 23 (duly certified by a C.A.) along with copies of Income Tax and Wealth Tax returns/assessment orders of all the partners and guarantors every year.	— To ascertain the movement of net worth of the promoter
25. The company's/firm's entire banking business (including merchant banking, Dividend and interest payments) should be routed through us/ members of the consortium proportionate to the sharing of the working capital facilities.	— To prevent diversion through other channels — To exercise partial – control on verifying end-use of funds
26. Firm/Company to declare/undertake to us:	FOR VERIFICATION OF ALL ASPECTS
— to supply to us, audited financial statements of the firm /company within 6 months from closure of financial year. Any delay in submitting these audited financial statements without our specific approval will attract penal interest @ 1% p.a. In case these statements are not received by us for a continuous period of 3 months, the bank may take further action as deemed fit by the bank.	— utilized to verify performance vis-a-vis estimates which can reasonably be led to conclusion of proper end use — for detection of otherwise undisclosed diversions — diversification in business lines/ unrelated or related but undisclosed investments /tie-ups are brought to notice of lender
— to provide to us promptly information (alongwith comments/ explanation) about all material and adverse changes in your project/business, ownership, management, liquidity, financial position etc.	Say for e.g. Serious internal problems, change in key management personnel, winding up petitions filed etc.
— that any liabilities or obligations under the facilities shall not, at any time, rank postponed in point and	Illustrative only

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
<p>security to any other obligation or liabilities to other lending institutions or banks or creditors, unless expressly agreed or permitted by bank.</p>	Self Explanatory
<p>— not to create or permit to subsist any mortgage, charge (whether floating or specific), pledge, lien or other security interest on any of your undertakings, properties or assets, without our prior consent in writing.</p>	Self Explanatory
<p>27. A stamped undertaking to be submitted in favour of the Bank to the following effect that during the currency of bank's credit facilities, the company/firm shall not, without our permission in writing :-</p>	Acts as a Deterrent.
<p>— effect any adverse changes in company's/firm's capital structure.</p>	Undertaking to prevent utilisation of funds for unauthorised purposes
<p>— formulate any scheme of amalgamation or merger or reconstruction.</p>	
<p>— implement any scheme of expansion or diversification or capital expenditure except normal replacements indicated in funds flow statement submitted to and approved by the Bank;</p>	Prevent diversion of short term funds to long term uses which can seriously impair day to day operations and create strain on cash flow.
<p>— enter into any borrowing or non-borrowing arrangements either secured or unsecured with any other bank, financial institution, company, firm or otherwise or accept deposits in excess of the limits laid down by Reserve Bank of India.</p>	
<p>— invest by way of share capital in or lend or advance funds to or place deposits with any other company/firm/concern (including group companies / associates)/ persons. Normal trade credit or</p>	Prevents diversion of funds to unauthorised purposes/ investments not approved/ endorsed by lenders etc.

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
security deposit in the normal course of business or advance to employees can, however be extended.	
— undertake guarantee obligations on behalf of a ny other company/ firm/person.	Can be debilitating if amount large and default ensues
— declare dividend for any year except out of profits relating to that year after meeting all the financial commitments to the bank and making all due and necessary provisions.	To check disproportionate outgo of funds which can adversely impact repayment of lender's dues
— make any drastic change(s) in its management set -up.	Self Explanatory
— approach capital market for mobilising additional resources either in the form of Debts or equity.	
— sell or dispose off or create security or encumbrances on the assets charged to the bank in favour of any other bank, financial institution, company, firm, individual.	To check siphoning of funds
— repay monies brought in by the promoters, partners, directors, share holders, their relatives and friends in the business of the company/firm by way of deposits /loans/share application money etc.	To check siphoning of funds
28. Declare the relationship, if any, of the directors of the company with the directors of the bank and senior officers of the bank.	Self Explanatory
29. The Bank reserves its right to appoint its nominee on Company's Board of Directors - part time/full time to oversee the functioning of the company/to look after bank's interests.	Self Explanatory
30. The company/firm to take prior approval from bank for opening any account with any other bank/ other branch of our bank.	To check diversion of funds / utilization for unauthorised purposes / investments

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
31. Firm/Company is permitted to open/maintain following C/D accounts with other banks/branches of our bank for specified purposes subject to submission of bank statements of these accounts to us every month/quarter for our perusal. Firm/Company will be required to close these accounts as and when required by bank.	Self Explanatory
32. The company/firm to submit a stamped declaration cum undertaking to the effect that :-	
— the company/firm or its directors/partners/promoters/guarantors/associate concerns of the company/firm are not on ECGC Caution list/specific approval list, RBI's defaulters/caution list, COFEPOSA defaulters list or our bank's defaulters list, and that no director of the company is disqualified u/s 274 of the Companies Act, 1956.	Self Explanatory
— No legal case of any nature has been filed against the company/its associates affecting the financial position substantially, and in case of any suit is/will be filed against the Company, the bank shall be kept informed.	Self Explanatory
— the company shall not induct a person who is/was a director in a company, which has been identified as a 'Willful defaulter' by the Bank, RBI or any Bank/FI, on company's Board and if such a person is found to be on the Company's Board, the company shall take expeditious and effective steps for removal of such person/s from Company's Board.	Self Explanatory
34. The credit facilities shall be utilised only for the purposes for which same are granted and said facilities shall not be	

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
'diverted' or 'siphoned off' or used for any other purposes.	Self explanatory
34. In case of default in the repayment of loans/advances/abovesaid facilities or in the repayment of interest thereon or any of the installment of Loan as per stipulated terms, or in the event of diversion or siphoning off or utilising the said facilities for any other purpose other than for which it is granted, the Bank and/or the Reserve Bank of India (RBI) will have an unqualified right to disclose or publish the name of the company/firm or its directors/partners as defaulters in such manner and through such medium as the Bank or RBI or such other agency authorised by them, in their absolute discretion may think fit.	Self explanatory
35. Please note that the cheques drawn by firm/Company will not be honoured by bank if in its view the payment is going towards a purpose for which the facilities are not sanctioned. Further, please note that Bank will not allow cash withdrawals beyond Rs. _____ per cheque/per day.	To prevent diversion to unauthorised purposes / investments / siphoning off of funds
36. Bank assumes no obligation whatsoever to meet your further (fund based or non fund based) requirements on account of growth in business or otherwise without proper revision and sanction of credit limits decided at the sole discretion of the bank. Further, if sanction terms are not complied with by you or if your account is classified as Non-performing Asset (NPA), then bank may not allow further withdrawals in the account.	Self Explanatory
37. (a) Notwithstanding what is stated herein above, we shall at any time and from time to time, be entitled to notify you and charge interest/commission/charges at such notified rates and this letter shall be construed as if such revised rates were mentioned herein.	Self Explanatory

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
<p>(b) You shall pay to or reimburse all costs, charges, expenses (including charges between the attorney or counsel and bank and those of our internal legal adviser/officer and other experts, consultants or professionals), disbursements, taxes, fees, stamp duties etc. whatsoever, incidental or to arising out of the facilities, their negotiation, the preparation, execution, registration and stamping of the documents relating thereto, the preservation or protection of our rights and interests of the enforcement or realisation of any security or any demand or any attempted recovery of the amounts due from you.</p>	Self Explanatory
<p>38. We shall be entitled to debit the amounts of all costs, charges and expenses to your account and such amounts shall stand secured by all securities given to or created in our favour in connection with the facilities. You indemnify and keep us fully and completely indemnified from time to time against the liabilities including all costs, charges and expenses stipulated herein whether debited to your account or not.</p>	Self Explanatory
<p>39. Any failure to exercise or delay in exercising any of our rights hereunder or under any other documents will not act as a waiver of that or any other right nor shall any single or partial exercise preclude any future exercise of that right.</p>	Self Explanatory
<p>40. So long as any monies are due to us from you under any of the facilities, we shall have a lien/charge for such amounts on all your credit balances, deposits, securities or other assets with, any of the branches of the Bank or of its</p>	

<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
<p>subsidiaries any where in the world and upon the happening of any of the events of default referred herein, we shall be entitled to exercise a right of set off between the amounts due and payable to us and the said credit balances, deposits, securities and other assets.</p>	Self Explanatory
<p>41. You shall not, except after prior written permission from us, make any alterations in your constitution, controlling ownership or any documents relating to its constitution or any other material change in your management or in the nature of your business or operations during the period of the subsistence of facilities.</p>	Self Explanatory
<p>42. The bank reserves the right to discontinue any/all the credit facilities granted without giving you any prior notice in case of non-compliance and/or breach of any of the terms and conditions based on which the facilities have been sanctioned to you and/or if any information/particulars/documents furnished by you are found to be incorrect.</p>	Self Explanatory
<p>43. You shall not undertake derivative transactions without approval of the Bank. You should obtain NOC from the Bank before entering into any derivative agreement with any other Bank.</p>	Self Explanatory.
<p>44. The Bank carries out the credit rating exercise every year when the facilities are reviewed. However, it reserves the right to carry out the credit rating exercise of the facilities at frequencies considered necessary and the rate of interest chargeable to the facilities would depend upon the rating obtained by the borrowing firm/ Company.</p>	Self Explanatory. Due to implementation of Basel II External rating is also being asked for.



<i>Terms, Conditions and Covenants</i>	<i>Remarks</i>
The Bank reserves the right to add, amend, alter, cancel and modify any of the terms and conditions stipulated hereinabove with or without any prior reference to you. Further, the bank's general rules governing advances shall also apply. The company/firm to abide by such terms and conditions as the bank may stipulate from time to time.	Self Explanatory.

**PARA 14 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

"14. The Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956."

**Dividend on Equity Capital**

	<i>Rate of Dividend (%)</i>	<i>Dividend Declaration Date</i>	<i>Amount transferred to Reserves (Rs.)</i>
Interim Dividend – 1			
Interim Dividend – 2			
Final Dividend			

**Dividend on Preference Capital**

	<i>Rate of Dividend (%)</i>	<i>Dividend Declaration Date</i>	<i>Amount transferred to Reserves (Rs.)</i>
Dividend			

**Compliance Inputs**

- Board resolution recommending final dividend;
- Board resolution approving interim dividend;
- Board authorization for opening of a separate Bank Account for payment of dividend;
- Books of account;
- Register of members;

- Declaration of dividend at the annual general meeting;
- Permission of Reserve Bank of India, if required before dividend was remitted to foreigners/non resident Indians and withholding tax if any;
- Intimation to stock exchanges, in case of listed company;

**Checklist**

- (a) Check whether Board resolution recommending final dividend has been passed;
- (b) Check whether Board resolution approving interim dividend has been passed;
- (c) Check whether dividends were declared out of profits after providing for depreciation according to the provisions of Section 205(2) of the Companies Act, 1956;
- (d) Check whether specified minimum amount has been transferred to reserves according to the Companies (Transfer of Profits to Reserves) Rules, 1975;
- (e) Check whether the Board has authorised the opening of a separate Bank Account for payment of dividend;
- (f) Check whether the amount of dividend including interim dividend was deposited in the separate Bank Account within 5 days from the date of declaration of such dividend;
- (g) Check whether register of members was closed as per the provisions of Section 154 of the Companies Act, 1956;
- (h) Check whether dividend recommended by the Board was declared at the annual general meeting;
- (i) Check whether dividend warrants were printed, signed and despatched to the registered shareholders within 30 days of declaration;
- (j) Check whether permission of Reserve Bank of India, if required was obtained before dividend was remitted to foreigners/non resident Indians, withholding tax, if any;
- (k) Check whether stock exchanges were duly intimated, in case of listed company;
- (l) Check whether voluntary transfer to reserves, if any, was made according to the Companies (Transfer of Profits to Reserves) Rules, 1975;
- (m) In case of inadequacy of profits, check whether the Companies (Declaration of Dividends out of Reserves) Rules, 1975, were complied with or previous approval of the Central Government was obtained, before such declaration;
- (n) Check whether dividends were paid in accordance with Section 206 of the Companies Act, 1956 only to the registered shareholder or his order or to his bankers. In case of a share warrant, dividend has been paid to the bearer of such warrant or to his bankers;

- (o) Check whether unpaid or unclaimed dividend was transferred to the unpaid dividend account within 7 days after the expiry of 30 days from the date of declaration;
- (p) Check whether amount of dividend remaining unpaid and unclaimed for seven years from the date they became due for payment has been transferred to the Investor Education and Protection Fund, established by the Central Government pursuant to Section 205C of the Companies Act, 1956 and while transferring the amount, the company furnished a statement in the prescribed form under Section 205A(6) of the Companies Act, 1956.

**PARA 15 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"15 The Company has insured fully all its assets."*

Particulars of Insurance cover obtained by the Company are as under:-

S. No.	Particulars of Asset Insured	Value of Asset (Rs.)	Sum Insured (Rs.)	Risk Covered	Amount of Policy	Insurance Company	Insurance Policy Number
1.						M/s. ....	
2.						M/s. ...	
3.						M/s. ...	

*Note :* Insert a remark, whether all the assets have been insured and provide a list of assets that haven't been insured.

### Compliance Inputs

- Original insurance policies
- Register of Assets
- Collateral Security offered to the lenders
- Stock Statement
- Premium payment receipts

### Checklist for Insurance Policies

- (a) Verify the original insurance policies and check carefully the details of assets covered by the policy.
- (b) The Company should take a Policy from a General Insurance company registered with IRDA
- (c) Policies are issued for a period of one year. Sometimes, short period policies for less than one year are also issued. Hence Policy period should be checked.

- Generally Fire Insurance policies cover immovable properties, stocks etc. Earthquake, Terrorism etc. are given as add on covers. Vehicles should have Valid Comprehensive Insurance Policies.
- Sum insured should represent the Market value / Replacement value as the case may be (not book value) or else, under insurance will be applicable. Name, address, situation (with Building No. etc.) of the Company should tally with the records.
- Name of the mortgagee should be verified.
- Any endorsement during the policy period, noting the changes in the sum insured, situation, risk etc. should be verified.

### **Checklist for Terms of Insurance**

Check the following in regard to compliance of terms of insurance:

- (a) the company's assets have been insured comprehensively. Where a joint insurance on plant and buildings has been taken, the value thereof has been apportioned in the manner prescribed / approved;
- (b) the insurance policy has been taken in the joint names of the company and the bank(s) / financial institution(s) ;
- (c) the policy has been kept alive for such full value, as has been determined by the bank(s) / financial institution(s) , all premia are being paid on time, and the company has not done any such act as would render the policy void or voidable;
- (d) the policy has been taken from an insurance office of repute, as determined by the bank(s) / financial institution(s) ; and
- (e) all moneys received under the insurance policies are held in trust for better securing to the bank(s) / financial institution(s) , the payment of all moneys secured under the indenture agreement.

**PARA 16 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"16. The name of the Company and or any of its Directors does not appear in the defaulters' list of Reserve Bank of India."*

### **Definition of wilful default**

A "wilful default" would be deemed to have occurred if any of the following events is noted :-

- (a) The company has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.

- (b) The company has defaulted in meeting its payment / repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
- (c) The company has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

In order to prevent the access to the capital markets by the wilful defaulters, a copy of the list of wilful defaulters (non-suit filed accounts) and list of wilful defaulters (suit-filed accounts) are forwarded to SEBI by RBI and Credit Information Bureau (India) Ltd. (CIBIL) respectively.

### Compliance Inputs

- Register of Deposits
- Register of Loans
- RBI defaulters list and ECGC's Specific Approval List : The Reserve Bank of India periodically releases the lists of suit filed accounts of (a) Rs.1 crore and above and (b) willful defaulters of Rs.25 lakh and above as on a particular date. These are available on the Reserve Bank of India website on a special URL: defaulters.rbi.org.in These lists in a single booklet form are also available for sale at the Reserve Bank's Sales Division at Amar Building, Fort, Mumbai.

### Checklist

- (a) Check that the name of the Company or its Director(s) does not appear in the Defaulters list of Reserve Bank of India;
- (b) Check whether the company has / has not entered into any One Time Settlement (OTS) arrangement with any FI/Bank(s) during the period to which the Report pertains.

**PARA 17 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"17. The name of the Company and /or any of its Directors does not appear in the Specific Approval List of Export Credit Guarantee Corporation"*

### Compliance Inputs

- Specific Approval List of ECGC :

The ECGC's Special Approval is not a public document. However, the information about a particular company is made available by the ECGC on a case to case basis. The PCS may visit the ECGC's website [www.ecgc.in](http://www.ecgc.in) to

obtain the names and contact details of the respective officers in his/her vicinity who can be approached for obtaining the required information.

### Checklist

- (a) Check that the name of the Company or its Director(s) does not appear in the Specific Approval List of ECGC;

**PARA 18 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"18. The Company has paid all its Statutory dues and satisfactory arrangements had been made for arrears of any such dues"*

- Note :
1. Obtain a Report from the management of the company regarding the applicable laws and compliance thereof.
  2. An illustrative list of various statutes applicable to companies is placed as Annexure F

### Compliance Inputs

- Original receipts evidencing payment of liabilities / dues of all the ground rents, rates, taxes, duties and outgoings immediately on their becoming due.
- Relevant ledger accounts.

### Checklist

- (a) Check whether the disputed dues have been paid.
- (b) Check that as regards payment of liabilities / dues that the company has been paying all the ground rents, rates, taxes<sup>5</sup>, dues, duties and outgoings immediately on their becoming due.
- (c) Check whether satisfactory provisions have also been made for meeting tax liabilities for subsequent years.
- (d) Check whether the company has a structured compliance reporting system in place on statutory payments

**PARA 19 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"19. The funds borrowed from banks/ financial institutions have been used by the company for the purpose for which they were borrowed."*

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5. Taxes include income tax, corporation tax, sales tax, provident fund contribution, EXI contribution, etc.

**Checklist for Utilisation of moneys advanced**

- (a) Check that any changes / deviations in the time schedule for completion of the project have been made in consultation with the bank.

**Checklist for Financial Position**

Check the financial position to ensure that:

- (a) no money has been withdrawn from the business, out of the capital or in anticipation of profits, without prior consent of the bank(s) / financial institution(s) ; and

**Checklist for Utilisation of Moneys Advanced**

Ensure that consistency has been maintained in utilisation of moneys advanced. The following aspects may be specifically examined:

- (a) funds have been utilised for the purposes laid down in the loan agreement. Where funds have not been so utilised, the requisite permission has been taken;
- (b) requisite conditions laid down to qualify for the outstanding balance of the loan have been fulfilled;
- (c) the drawals from the loan are being kept in a separate Scheduled Bank Account, payments therefrom are being made in the manner laid down in the indenture, the said scheduled bank has foregone its right to set-off or lien, in respect of the said account, and the borrower is maintaining the records pertaining to the said account, as provided;
- (d) no part of the loan moneys has been transferred to call, short term, fixed or any other deposits, without prior consent. Where such consent has been obtained, the scheduled bank has foregone its right to set off any amount due from the company, against the deposits, the deposits have been realised on their due dates and the proceeds thereof re-deposited in the special account;
- (e) the expenditure has been financed in the manner provided for in the indenture.

**Diversion and siphoning of funds**

The terms "diversion of funds" and "siphoning of funds" should construe to mean the following:-

**Diversion of funds**, would be construed to include any one of the under noted occurrences:

- (a) utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;
- (b) deploying borrowed funds for purposes / activities or creation of assets

other than those for which the loan was sanctioned;

- (c) transferring funds to the subsidiaries / Group companies or other corporates by whatever modalities;
- (d) routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;
- (e) investment in other companies by way of acquiring equities / debt instruments without approval of lenders;
- (f) shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.

**Siphoning of funds**, should be construed to occur if any funds borrowed from banks / FIs are utilised for purposes un-related to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. The decision as to whether a particular instance amounts to siphoning of funds would have to be a judgement of the lenders based on objective facts and circumstances of the case.

The identification of the wilful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions/incidents.

The default to be categorised as wilful must be intentional, deliberate and calculated.

### **Compliance Inputs**

#### *Term Loan*

Large term loans (Rs. 25 crores and above for an Institution)–

- In most cases, more than one bank will be involved and a lender's engineer might have been appointed, who is expected to inspect and benchmark progress against milestones and expenditure incurred commensurate with the drawals. The PCS may rely on such certification.
- Wherever letters of credit (inland/foreign) have been opened for specific items of capital expenditure and the relative bill(s) debited to term loan account end use is automatically taken care of.
- It's quite likely that in some projects where civil construction takes place, architect certificate is asked for. The PCS may rely on such certification.
- Lenders in some specific cases, permit reimbursement of expenditure incurred. PCS are advised to verify that proper certification exists for such transactions.
- Wherever items of expenditure are clearly identified PCS may comment



on compliance with monetary outgo in respect of such items.

#### *Mid Size and Small Projects*

- Wherever lenders engineer / architect certification is available these may be relied upon; similarly for inland foreign L/C for capital expenditure.
- In other cases PCS may verify mode of payment made to the supplier/ intended beneficiary in respect of drawals from term loans.
- Wherever certification such as engineer / chartered engineer's valuation report exists, reliance can be placed on the same.

#### *Working Capital*

##### Cash Credit Accounts

- Compliance inputs
  - o Cash and Bank Book
  - o Stocks / Book debts Statements submitted to the bank(s)
  - o Monthly Select Operational Data (MSOD) / Quarterly Information System (QIS2) / Financial Follow up Report (FFR) filings to banks
  - o Stock / Book Debt (Receivables) Audit Report commissioned by any of the member bank(s)
  - o Auditors Report under CARO to ensure compliance
  - o Quality of Inventory Management system

##### Suggested alerts:

- o Disproportionately large cash payments in relation to normal requirements in a company of its size
- o Frequent circular transactions between various bank accounts
- o Inordinate delay in submission of stock statements / book debts / quarterly filings to the Bank(s)
- o Large differences between MSOD / QIS2 / FFR etc. with stock statements and inventory regularly and particularly as on date of balance sheet.
- o Delay / default in meeting statutory payments
- o Any apparent unrelated payment(s) that come to notice
- o Disproportionate holding of Work-in-progress (WIP)
- o Regular on account payments to creditors
- o Regular on account payments from debtors
- o Any differential pricing system to associates
- o Any attachment of bank accounts from statutory authorities (input from bank)

- o Borrowings from unconventional sources
- o Dishonour of cheques
- o Unduly large sales returns / return of bills
- o Lack of tie ups in project finance resulting in diversion of short term funds
- o Winding-up cases if any filed against the company
- o Insolvency proceedings against any of the promoter(s) / director(s)

**PARA 20** *As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009*

*"20. The Company has complied with the provisions stipulated in Section 372 A of the Companies Act in respect of its Inter Corporate loans and investments."*

<i>Name of the Company (Rs.)</i>	<i>Loans Advanced (Rs.)</i>	<i>Guarantees Given (Rs.)</i>	<i>Securities Provided (Rs.)</i>	<i>Investments made (Rs.)</i>
M/s....				
M/s....				
M/s....				
M/s....				
M/s....				

#### **Compliance Inputs**

- Relevant ledger accounts
- Board resolutions passed with the consent of all the directors present at the meeting
- Register maintained in this regard as per the provisions of Section 372A(5) of the Companies Act, 1956
- Copy of the special resolution filed with the ROC alongwith e-form no. 23
- Register showing the particulars in respect of every instalment or loans or security or guarantee maintained in this regard as per the provisions of Section 372A(5) of the Companies Act, 1956.
- Register of Investments or Loans Made, Guarantee Given or Security

Provided under Section 372A of the Companies Act, 1956

### Checklist

- (a) Check whether provisions of section 372A are applicable [refer section 372A(8)] of the Companies Act, 1956. If provisions of section 372A are applicable, check whether the aggregate of the loans made, guarantees given, securities provided or investments made by the company are within the limits of sixty per cent of its paid-up share capital and free reserves, or one hundred per cent of its free reserves, whichever is more as prescribed under section 372A.
- (b) Check that :
  - (i) the company has not defaulted in complying with the provisions of section 58A of the Companies Act, 1956;
  - (ii) Board resolutions were passed with the consent of all the directors present at the meeting;
  - (iii) the details regarding the transaction were entered chronologically in the Register maintained in this regard as per the provisions of section 372A(5), within 7 days of the transaction(s);
  - (iv) the company has complied with the guidelines if any issued by the Central Government under sub-section (7) of section 372A.
- (c) If the aggregate has exceeded the prescribed limits, check whether:
  - (i) Board resolutions were passed unanimously approving the impending transaction subject to members' previous approval at general meeting;
  - (ii) the company has secured prior approval of the public bank(s) / financial institution(s) where any term loan is subsisting if it has defaulted in repayment of loan instalments or payment of interest thereon as per terms and conditions of such loan as required under sub-section (2) of section 372A;
  - (iii) general meeting(s) (AGM or EGM) have been held and specific special resolutions have been passed stating the limits, particulars of body(ies) corporate in which the investment is proposed to be made or loan or security or guarantees to be given, the purpose and the specific source of funding etc.;
  - (iv) no omnibus special resolution(s) have been passed;
  - (v) the company has filed a copy of the special resolution along with e-form 23 with the Registrar within 30 days of passing of such resolution;
  - (vi) in the case of guarantees given by the Board of directors without the authorisation of special resolution(s) check that :

- exceptional circumstances existed which prevented the company from obtaining the resolution;
  - the Board passed a resolution authorising the same in accordance with the provisions of section 372A;
  - the Board resolution has been confirmed within 12 months at the earliest general meeting of the company;
  - notice of such general meeting (whether annual or extraordinary) indicated clearly the specific limits, the particulars of body(ies) corporate for which the guarantee was given etc.
- (d) In the case of loans, check whether the interest rate at which it was made was not lower than the prevailing bank rate as prescribed under Section 49 of the Reserve Bank of India Act, 1934;
- (e) Check whether the details regarding the transaction(s) were entered chronologically in the register maintained in this regard as per the provisions of section 372A(5) of the Companies Act, 1956 within 7 days of the transaction(s).
- (f) Check whether the register showing the particulars in respect of every investment or loans or security or guarantee is kept at the registered office of the company.

**PARA 21 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"21. It has been observed from the Reports of the Directors and the Auditors that the Company has complied with the applicable Accounting Standards issued by the Institute of Chartered Accountants in India."*

#### **Compliance Inputs**

- Auditors' Report
- Boards' Report

#### **Checklist**

Based on the last auditor's Report check whether the company has complied with the applicable Accounting Standards.

In this regard

- Section 217(2AA) of the Companies Act, 1956 requires that the Board's Report should include a directors responsibility statement indicating therein:
  - that in the preparation of the annual accounts, the applicable

accounting standards have been followed along with proper explanation relating to material departures;

- Section 211 (3B) of the Companies Act, 1956 requires where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and the balance sheet, the following:
  - the deviation from the accounting standards;
  - the reasons for such deviation; and
  - the financial effect, if any arising due to such deviations.
- Section 227(3)(d) of the Companies Act, 1956 also requires the auditor's Report to state whether in his opinion, the profit and loss account and balance sheet comply with the Accounting Standards referred to in sub-section (3C) of section 211(specified standards). The standards of accounting specified by ICAI shall be deemed to be accounting standards until the accounting standards are prescribed by the Central Government under section 211(3C) of the Act.

In view of this, while it may be possible to certify that all Accounting Standards have been followed, it may be not be practical to state that all Accounting Standards have been complied with.

**PARA 22 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"22. The Company has credited and paid to the Investor Education and Protection Fund all the unpaid dividends and other amounts required to be so credited."*

### **Compliance Inputs**

- Annual Accounts and Annual Return
- Relevant ledger accounts
- Copy of the challan filed with the Registrar of Companies along with a statement in e-form 1 duly certified by a Company Secretary or a Chartered Accountant or a Cost Accountant practising in India or by the statutory auditors of the company.

### **Checklist**

- (a) Check whether the company has transferred the following amounts to the Investor Education and Protection Fund within a period of thirty days of such amounts becoming due to be credited to the fund :
  - (i) amounts in the unpaid dividend accounts of the company;
  - (ii) the application money received by the company for allotment of

- any securities and due for refund;
- (iii) matured deposits with the company;
  - (iv) matured debentures with the company;
  - (v) interest accrued on the amounts referred to in clauses (i) to (iv) above;
- if such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.
- (b) Check whether the company has filed with the concerned Registrar of Companies one copy of the challan along with a statement in e-form 1 duly certified by a Company Secretary or a Chartered Accountant or a Cost Accountant practising in India or by the statutory auditors of the company.
  - (c) Check whether the company has kept a record relating to folio number, certificate number etc. in respect of persons to whom the amount of unpaid and unclaimed dividend, application money, matured deposit or debentures, interest accrued is payable for a period of three years.
  - (d) Check whether the company has furnished estimates of the amounts to be credited to the fund in e-form no. 2, if so called upon by the Committee as per Rule 8 of the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001.

**PARA 23 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"23. Prosecutions initiated against or show cause notices received by the Company for alleged defaults/offences under various statutory provisions and also fines and penalties imposed on the Company and or any other action initiated against the Company and /or its directors in such cases are detailed in Annexure....."*

**Compliance Inputs**

- In case of show cause notice issued for non-compliance of any of the provisions of the Companies Act, 1956 – the explanations given by the company while assessing enormity of the violations in question.
- The notices of prosecution / show cause.

**Checklist**

- (a) Check whether the company has been issued any show cause notice for non-compliance of any of the provisions of the Companies Act, 1956; if so, verify the explanations given by the company while assessing enormity of the violations in question;
- (b) Check whether the notices of prosecution/show cause have been placed before the Board;

- (c) Check whether the company has received any prosecution notice;
- (d) Check whether any inspection or investigation has been ordered under the Companies Act, 1956 and if so, assess the status at the time of issuing the Compliance Certificate;
- (e) Check whether any fines and penalties or any other punishment was imposed on the company;
- (f) Check whether any order has been issued under the Companies Act, 1956 for compounding of the offences; if so check whether the company has complied with the orders passed by the concerned authorities.

**PARA 24 As per the RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"24. The Company has (being a listed entity) complied with the provisions of the Listing Agreement"*

#### **Compliance Inputs**

- Clause 41 of the listing agreement
- Quarterly Reports filed by the company under the listing agreement
- Copies of the Reports filed with the Stock Exchange
- Copy of the Prospectus
- Register of Directors u/s 303 of the Companies Act, 1956
- Minutes of the Board and General Meetings
- E-form 32 filed with ROC
- Minimum and maximum number of directors on the Board as per the Articles of Association/Board resolution
- Resolution of the Board of Directors / Company appointing, designating, varying the terms of appointment of each director and notices and explanatory statements pertaining to such matters
- Resume of each Director
- Disclosure of interest made by each Director
- Register of Directors
- Register of Directors Shareholding
- Register of Firms/parties in which Directors are interested
- Management Representations
- Declaration given by the Directors
- Resolution of the Board of Directors /General Meetings with regard to compensation payable to Non-Executive Directors and notices and explanatory statements pertaining to such matters

- Abstract of terms of appointment of Directors, Managing / Wholetime Directors
- Stock options scheme, as applicable to Non-Executive Directors including Independent Directors
- Management representation in this behalf
- Noting, Minutes of meetings of Board
- Minutes of the meetings of committees of the Board
- Agenda of the Board/committee meetings
- Disclosures made by directors from time to time
- The Code of Conduct of the Company
- The Minutes of the Meeting in which the Board approved the code
- The website of the Company
- Annual affirmation letters of compliance by all the board members and senior executives
- Declaration of the CEO
- Annual Report of the Company
- Minutes of Board and Audit Committee meetings
- Qualification and experience of Members of the Audit Committee
- Notices of Meetings of Audit Committee
- Agenda of the Audit Committee meetings
- Attendance Register, if any
- Minutes of Meetings of Audit Committee
- Whistle Blower Policy
- Action Taken Report submitted by the Company Secretary to the Committee
- Minutes of the Board Meetings of the "material" non-listed Indian subsidiary Company
- Disclosures made in the Annual Report as per AS-18 (Related Party)
- Register of Contracts
- Application for Approval of Central Government under the Act and orders granting approval
- Notes on accounts
- Directors' Responsibility Statement
- Report of the Auditors
- Accounting Policy
- Disclosures made in the Corporate Governance Report
- Risk Assessment Policy, if any



- Prospectus / Letter of Offer
- Disclosure under Clause 43 of the Listing Agreement
- Disclosure under Section 217 of the Companies Act, 1956 in the Directors' Report
- Certificates issued by the auditors of the Company
- Notices, notes, minutes and explanatory statements of Meetings of the Board of directors, Company, remuneration committee
- Register of Directors' shareholding under Section 307 of the Companies Act, 1956
- Declaration of Beneficial Interest Section 187-C of the Companies Act, 1956 read with the Companies (Declaration of Beneficial Interest in Shares) Rules, 1975
- Relevant Annual Report
- Management Discussion and Analysis Report
- Notes relating to each item to be included therein
- Human Resources at work and their categories
- Disclosure by senior management about all material financial and commercial transactions
- Organization Chart
- Information about directors and candidates for directorships
- Disclosures made by Directors
- Information published on website
- Quarterly results/presentation made to analysts
- Minutes of Meeting of Board of Directors of the Company constituting Shareholders/Investors Grievance Committee
- Resolution regarding delegation of authority for expeditious transfer of shares
- Resolution appointing CEO/CFO
- Qualification and experience of CEO/CFO
- Auditors Report under CARO
- Intimations sent to the Stock Exchange
- Corporate Governance Report

*Note:* Reference may be made to the ICSI publication entitled 'Guidance Note on Compliance Certificate under the Listing Agreement'

**PARA 25 of the Diligence Report as per the RBI Circular No. DBOD.No. BRBC.110/08.12.001/2008-09 dated February 10, 2009 read with RBI Circular No. UBD.PCB No. 49/13.05.000/2008-09 dated February 12, 2009**

*"25. The Company has deposited within the stipulated time both Employees' and Employer's contribution to Provident Fund with the prescribed authorities"*

**Compliance Inputs**

- Relevant Ledger Accounts
- No dues certificate from the Provident Fund Authorities

**Checklist**

Check whether the company has constituted a Provident Fund for its employees or any class of employees and approval under the Employees Provident Fund and Miscellaneous Provisions (EPF & MP) Act, 1952 has been obtained. If yes, check that all moneys contributed to such fund (whether by the company or by the employees) or received or accruing by way of interest or otherwise to such fund have been deposited within 15 days from the date of contribution, receipt of accrual, as the case may be, in an account as specified in clause (a) of subsection (1) of section 418 or invested in the securities mentioned or referred to in clause (a) to (e) of section 20 of the Indian Trust Act, 1882.

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## **ANNEXURES**

ANNEXURE A

**RBI CIRCULAR NO.  
BP. BC.46/08.12.001/2008-09**

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RBI/2008-2009/183

DBOD No. BP. BC.46/ 08.12.001/2008-09

September 19, 2008

The Chairman & Managing Directors /Chief Executive Officers  
of All Scheduled Commercial Banks (excluding RRBs and LABs)

Dear Sir,

**Lending under Consortium Arrangement/Multiple Banking Arrangements**

As you are aware, various regulatory prescriptions regarding conduct of consortium / multiple banking / syndicate arrangements were withdrawn by Reserve Bank of India in October 1996 with a view to introducing flexibility in the credit delivery system and to facilitate smooth flow of credit. However, Central Vigilance Commission, Government of India, in the light of frauds involving consortium/multiple banking arrangements which have taken place recently, has expressed concerns on the working of Consortium Lending and Multiple Banking Arrangements in the banking system. The Commission has attributed the incidence of frauds mainly to the lack of effective sharing of information about the credit history and the conduct of the account of the borrowers among various banks.

2. The matter has been examined by us in consultation with the Indian Banks Association who are of the opinion that there is need for improving the sharing/dissemination of information among the banks about the status of the borrowers enjoying credit facilities from more than one bank. Accordingly, the banks are encouraged 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 in *Annex 1*. In the case of existing lenders, all the banks may seek a declaration from their existing borrowers availing sanctioned limits of Rs. 5.00 crore and above or wherever, it is in their knowledge that their borrowers are availing credit facilities from other banks, and introduce a system of exchange of information with other banks as indicated above.

- (ii) Subsequently, banks should exchange information about the conduct of the borrowers' accounts with other banks in the format given in *Annex II* at least at quarterly intervals.
- (iii) Obtain regular certification by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions that are in vogue, as per specimen given in *Annex III*.
- (iv) Make greater use of credit Reports available from CIBIL.
- (v) The banks should incorporate suitable clauses in the loan agreements in future (at the time of next renewal in the case of existing facilities) regarding exchange of credit information so as to address confidentiality issues.

Yours faithfully,

(Prashant Saran)

Chief General Manager-in-Charge

#### ANNEX I

#### Minimum Information to be Declared by Borrowing Entities to Banks while Approaching for Finance under Multiple Banking Arrangements

##### A. Details of borrowing arrangements from other banks (institution-wise)

I. Name and address of bank / institution	
II. Purpose for which borrowed	
III. Limit sanctioned (full details to be given, e.g. working capital/demand loan/term loan/short term loan)/ foreign currency loan, corporate loan / line of credit / Channel financing contingent facilities like LC, BG, DPG (I&F) etc. Also, state L/C bills discounting/project wise finance availed)	
IV. Date of sanction	
V. Present outstanding	
VI. Overdues position, if any	
VII. Repayment terms (for demand loans, term loans, corporate loans, project-wise finance)	

VIII. Security offered (complete details of security both primary and collateral including specific cash flows assigned to project wise finance / loan raised & personal/ corporate guarantee, to be furnished)	
IX. Requests for facilities which are under process	

[The information to be given for domestic and overseas borrowings from commercial banks, Financial institutions and NBFCs]

### B. Miscellaneous Details

I. CPs raised during the year and current outstanding	
II. Details of financing outside banking system e.g. L/C Bills discounting	
III. Main and allied activities with locations	
IV. Territory of sales and market share	
V. Details of financial aspects incl. DSCR Projections wherever applicable as per requirement of bank - Imp. Financial covenants, if any, agreed to / accepted with other lenders.	
VI. CID A/Cs, within / outside financing Banks, being operated, if any	
VII. Demands by statutory authorities / current status thereof	
VIII. Pending litigations	
IX. A declaration authorizing the bank to share information with other financing banks	

## ANNEX - II

### Revised Format under Multiple Banking Arrangement Credit Information Exchange

#### Part – I Bio Data

- |                                       |
|---------------------------------------|
| I. Borrowing party's name and address |
| II. Constitution                      |
| III. Names of Directors / Partners    |

- IV. Business activity
  - \* Main
  - \* Allied
- V. Names of other financing Banks
- VI. Net worth of Directors/Partners
- VII. Group affiliation, if any
- VIII. Date on associate concerns, if banking with the same bank
- IX. Changes in shareholding and management from the previous Report, if any

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### **Part - II Financial**

- I. IRAC Classification
- II. Internal Credit rating with narration
- III. External Credit rating, if any
- IV. Latest available Annual Report of the As on .....  
borrower

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### **Part – III Exposure Details**

- I. Type of credit facilities, e.g. working capital loan / demand loan / term loan / short term loan / foreign currency loan, corporate loan / line of credit / Channel financing, contingent facilities like LC, BG & DPG (I & F) etc. Also, state L/C bills discounting / project wise finance availed).
- II. Purpose of loan
- III. Date of loan facilities (including temporary facilities)
- IV. Amount sanctioned (facility wise)
- V. Balance outstanding (facility wise)
- VI. Repayment terms
- VII. Security offered
  - \* Primary

- \* Collateral
- \* Personal / Corporate Guarantees
- \* Extent of control over cash flow

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VIII. Defaults in term commitments / lease rentals/ others

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IX. Any other special information like court cases, statutory dues, major defaults, adverse internal/external audit observations

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#### **Part – IV Experience**

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I. Conduct of funded facilities (based on cash management/tendency to overdraw)

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II. Conduct of contingent facilities (based on payment history)

---

III. Compliance with financial covenants

---

IV. Company's internal system & procedure

---

V. Quality of management

---

VI. Overall assessment

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(The above to be rated as good, satisfactory or below par only)

(\*) Broad guidelines for incorporating comments under this head is furnished in the next page

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#### **BROAD GUIDELINES FOR INCORPORATING COMMENTS UNDER PART - VI (EXPERIENCE) OF THE CREDIT INFORMATION REPORT**

	<i>Good</i>	<i>Satisfactory</i>	<i>Below Par</i>
<b>I. Conduct of funded facilities</b>			
* Over-drawings (No. of times)	Upto 4 times	5 to 6 times	Above 6 times
* Average period of adjustment	Within 1 month	Within 2 months	Beyond 2 months
* Extent of overdrawings (% of limit)	Upto 10%	10 to 20%	Above 20%

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	<i>Good</i>	<i>Satisfactory</i>	<i>Below Par</i>
<b>II. Conduct of contingent facilities (Other than Derivatives)</b>			
* No. of Defaults	Upto 2 times	3 to 4 times	Above 4 times
* Average period of adjustment	Within 1 week	Within 2 weeks	Beyond 2 weeks
<b>III Compliance with financial covenants</b>			
* Stock statement / Financial data	Timely	Delay upto 15 days	Delay over 15 days
* Creation of charge	Prompt	Delay upto 2 months	Delay over 2 months
<b>IV. Company's internal systems and procedures</b>			
* Inventory Management	Adequate systems are in place	Adequate systems are in place but not adhered	Adequate systems are not in place
* Receivables Management	- do -	- do -	- do -
* Resource Allocation	- do -	- do -	- do -
* Control over Information	- do -	- do -	- do -
<b>V. Quality of management</b>			
* Integrity	Reliable	Nothing adverse	Cannot be categorized in previous columns
* Expertise Competence/ Commitments	Professional & visionary	Have necessary experience	-do-
* Tract Record	Timely	Executions	-do-

**ANNEX- III****Part - I****Diligence Report**

To,  
The Manager,

\_\_\_\_\_ (Name of the Bank)

I / We have examined the registers, records, books and papers of \_\_\_\_\_ Limited (the Company) as required to be maintained under the Companies

Act, 1956 (the Act) and the rules made thereunder, the provisions of various statutes, wherever applicable, the provisions contained in the Memorandum and Articles of Association of the Company as well as the provisions contained in the Listing Agreement/s, if any, entered into by the Company with the recognized stock exchange/s, as may be applicable for the half year ended on \_\_\_\_\_. In my / our opinion and to the best of my / our information and according to the examination carried out by me / us and explanations furnished to me / us by the Company, its officers and agents. I / We Report that in respect of the aforesaid period :

1. the management of the Company is carried out by the Board of Directors comprising the following persons :  
During the period under review the following changes took place:
2. the shareholding pattern of the company is as under :  
During the period under review the following changes took place:
3. the company has altered the following provisions of
  - (i) the Memorandum of Association during the period under review and has complied with the provisions of the Act.
  - (ii) the following Articles of Association during the period under review and has complied with the provisions of the Act.
4. the company has during the period under review, entered into the following transactions with business entities in which directors are interested.
5. the company has during the period under review, advanced loans, given guarantees and provided securities amounting to Rs. \_\_\_\_ to its directors and / or persons or firms or companies in which directors are interested.
6. the Company has during the period under review, made loans and investments; or given guarantees or provided securities to other business entities as under :
7. the amount borrowed by the Company from directors, members, public, financial institutions, banks and others during the period under review is / are within the borrowing limits of the Company. The break-up of the company's borrowings is as under:
8. The Company has during the period under review, not defaulted in the repayment of any public deposits or unsecured loans and the Company or its Directors are not under the Defaulter's list of Reserve Bank of India or in the Specific Approval List of ECGC.
9. The Company has during the period under review, created, modified or satisfied charges on the assets of the company as under "
10. the Forex Exposure and Overseas Borrowings of the company are as under :

11. the Company has issued, offered and allotted all the securities to the persons entitled thereto and has also issued letters, coupons, warrants and certificates thereof to the concerned persons and also redeemed its preference shares / debentures and bought back its shares (wherever applicable) in compliance with the specified procedures and within the stipulated time.
12. the Company has insured all its assets including the secured assets.
13. the Company has complied with the terms and conditions, set forth by the lending institution at the time of availing the facility and also during the currency of the loan and has utilized the funds for the purposes for which these were borrowed.
14. the Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956.
15. the Company has insured fully all its assets.
16. the Company/Directors are not in the willful defaulters' list of RBI.
17. the Company / Directors are not in the Specific Approval List of ECGC.
18. the Company has paid all its Statutory dues and that there are no arrears.
19. the Company has complied with the terms and conditions, set forth by the lending institution at the time of availing any facility and also during the currency of the loan.
20. the Company has used the funds for the purposes for which it borrowed.
21. the Company has declared and paid dividends to its shareholders, as per the provisions of the Companies Act.
22. the Company has complied with the provisions stipulated in Section 372A of the Companies Act in respect of its Inter Corporate loans and Investments.
23. the Company has complied with the applicable and mandatory Accounting Standards issued by the Institute of Chartered Accountants of India.
24. the Company has credited and paid to the Investor Education and Protection Fund all the unpaid dividends and other amounts required to be so credited.
25. a list of prosecutions initiated against or show cause notices received by the Company for alleged offences under the Act and also the fines and penalties or any other punishment imposed on the Company in such cases is attached.
26. the Company has complied with the various clauses of the Listing Agreement, if applicable.



ANNEXURE B

**RBI CIRCULAR NO.  
BC. 94/08.12.001/2008-09**

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RBI/2008-2009/313

DBOD.No. BPBC.94 /08.12.001/2008-09

December 08, 2008

The Chairman & Managing Directors /  
Chief Executive Officers of  
All Scheduled Commercial Banks  
(Excluding RRBs and LABs)

Dear Sir,

**Lending under Consortium Arrangement / Multiple Banking Arrangements**

Please refer to our circular RBI/2008-2009/183/DBOD.No.BPBC.46/08.12.001/2008-09 dated September 19, 2008 on the captioned subject.

2. The formats for declaration of information by the borrower at the time of applying for a credit facility to a bank (Annex I) and the format for exchange of information among the banks in respect of borrowers enjoying credit facilities from more than one bank (Annex II), enclosed to the aforesaid circular have been revised to reflect information relating to the derivatives transactions entered into by banks with the borrowers and the unhedged foreign currency exposures of the borrowers.
3. Banks are advised to use the revised formats with immediate effect.

Yours faithfully,

(Prashant Saran)  
*Chief General Manager-in-Charge*

**Annex - I****Minimum Information to be Declared by Borrowing Entities to Banks while Approaching for Finance under Multiple Banking Arrangement****A. Details of borrowing arrangements from other banks (institution-wise and facility-wise)****I. Name and address of bank / institution****II. Facilities availed****A. Fund-based credit facilities**

(Indicate the nature of facilities e.g. working capital/demand loan / term loan/short term loan) / foreign currency loan, corporate loan / line of credit/ Channel financing, bill discounting etc. amount and the purpose)

**B. Non-fund-based facilities other than derivatives**

(Indicate the nature of facilities e.g. L/C, BG, DPG (I & F) etc. amount and the purpose)

**C. Derivatives contracts entered into with the bank**

(Indicate the nature of the contract, maturity, amount and the purpose)

**III. Date of sanction****IV. Present outstanding**

(In the case of derivatives contracts, negative MTM i.e which is not due for settlement may be indicated)

**V. Overdues position, if any**

(In the case of derivatives contracts, the negative MTM i.e. amount payable to the bank under the contract but not yet paid may be indicated)

**VI. Repayment terms**

(for demand loans, term loans, corporate loans, project - wise finance)

**VII. Security offered**

(complete details of security both primary and collateral including specific cash flows assigned to project wise finance / loan raised & personal / corporate guarantee, to be furnished)

**VIII. Requests for facilities which are under process**

[The information to be given for domestic and overseas borrowings from commercial banks, financial institution(s) s and NBFCs]

**B. Miscellaneous Details**

*(Rs. in crore)*

- I. CPs raised during the year and current outstanding
- II. Details of financing outside banking system e.g. L/C Bills discounting
- III Amount of un-hedged foreign currency exposures( please give currency-wise position in the format given below)
  - (i) Short term exposures (less than one year)
    - (a) Long positions
    - (b) Short positions
    - (c) Net Short term Exposure (a-b)
  - (ii) Long term exposures (one year and beyond)
    - (a) Long positions
    - (b) Short positions
    - (c) Net Long term exposure a-b)
  - (iii) Overall Net Position (i-ii) for each currency
  - (iv) Overall Net Position across all currencies
- III. Main and allied activities with locations

- IV. Territory of sales and market share
- V. Details of financial aspects incl. DSCR Projections wherever applicable as per requirement of bank - Imp. Financial covenants, if any, agreed to / accepted with other lenders.
- VI. CID A/Cs, within / outside financing Banks, being operated, if any
- VII. Demands by statutory authorities / current status thereof
- VIII. Pending litigations
- IX. A declaration authorizing the bank to share information with other financing banks

#### **Annex - II**

#### **Revised Format under Multiple Banking Arrangement Credit Information Exchange**

#### **Part – I**

#### **Bio Data of the Company**

- I. Borrowing party's name and address
- II. Constitution
- III. Names of Directors / Partners
- IV. Business activity
  - \* Main
  - \* Allied
- V. Names of other financing Banks
- VI. Net worth of Directors / Partners
- VII. Group affiliation, if any
- VIII. Date on associate concerns, if banking with the same bank
- IX. Changes in shareholding and management from the previous report, if any



**Part - II****Major credit quality indicators**

- I. IRAC Classification
- II. Internal Credit rating with narration
- III. External Credit rating, if any
- IV. Latest available Annual Report of the borrower As on .....

**Part – III****Exposure Details other than Derivatives***(Rs. in crore)*

- I. Type of credit facilities, e.g. working capital loan / demand loan / term loan / short term loan / foreign currency loan, corporate loan / line of credit / Channel financing, contingent facilities like LC, BG & DPG (I & F) etc. Also, state L/C bills discounting / project wise finance availed)
- II. Purpose of loan
- III. Date of loan facilities (including temporary facilities)
- IV. Amount sanctioned (facility wise)
- V. Balance outstanding (facility wise)
- VI. Repayment terms
- VII. Security offered
  - \* Primary
  - \* Collateral
  - \* Personal / Corporate Guarantees
  - \* Extent of control over cash flow
- VIII. Defaults in term commitments / lease rentals / others
- IX. Any other special information like court cases, statutory dues, major defaults, adverse internal / external audit observations

**Part - IV****Exposure Details – Derivatives Transactions***(Rs. in crore)*

<i>Sr. No.</i>	<i>Nature of the derivatives Transactions</i>	<i>Notional Amount of contracts</i>	<i>Weighted -average maturity of contracts</i>	<i>Amount of positive MTM for the bank (Not due for settlement)</i>	<i>Amount of contracts classified as NPA</i>	<i>Notional Amount of out-standing contracts which have been restructured</i>	<i>Major reasons for restructuring (in brief)</i>
A.	Plain Vanilla Contracts						
1.	Forex Forward contracts						
2.	Interest rate Swaps						
3.	Foreign Currency Options						
4.	Any other contracts (Please specify)						
B.	Complex derivatives including various types of option combinations designed as cost reduction/ zero cost structures						
1.	Contracts involving only interest rate derivatives.						
2.	Other contracts including those involving foreign currency derivatives						
3.	Any other contracts (Please specify)						

**Part – V****Un-hedged foreign currency exposures of the borrower with  
currency-wise details***(Rs. in crore)*

I	Short term exposures (less than one year)
	(a) Long positions
	(b) Short positions
	(c) Net short- term exposure (a-b)
II	Long term exposures ( one year and beyond)
	(a) Long positions
	(b) Short positions
	(c) Net long-term exposure (a-b)
III	Overall Net Position (I –II) for each currency (Please give Overall Net Position in this format for each currency)
IV	Overall Net Position across all currencies

**Part – VI****Experience with the borrower**

I.	Conduct of funded facilities (based on cash management / tendency to overdraw)
II.	Conduct of contingent facilities (based on payment history)
III.	Compliance with financial covenants
IV.	Company's internal systems & procedures
V.	Quality of management
VI.	Overall Assessment

(The above to be rated as good, satisfactory or below par only)

(\*) Broad guidelines for incorporating comments under this head is  
furnished in the next page

**Broad Guidelines for Incorporating Comments under Part - VI  
(Experience) of the Credit Information Report**

	<i>Good</i>	<i>Satisfactory</i>	<i>Below Par</i>
<b>I. Conduct of funded facilities</b>			
* Over-drawings (No. of times)	Upto 4 times	5 to 6 times	Above 6 times
* Average period of adjustment	Within 1 month	Within 2 months	Beyond 2 months
* Extent of overdrawings (% of limit)	Upto 10%	10 to 20%	Above 20%
<b>II. Conduct of contingent facilities (Other than Derivatives)</b>			
* No. of Defaults	Upto 2 times	3 to 4 times	Above 4 times
* Average period of adjustment	Within 1 week	Within 2 weeks	Beyond 2 weeks
<b>III Conduct of Derivatives Transactions</b>			
* No. of contracts where the positive MTM value due to the bank remained overdue for more than 30 days	<25% of total number of contracts	25-50% of total number of contracts	> 50% of total number of contracts
* No. of contracts where the positive MTM value due to the bank remained overdue for more than 90 days and the account had to be classified as NPA ( but later on regularized and is not NPA as on the date of exchange of information)	<1% of total number of contracts	1-5% of total number of contracts	> 5% of total number of contracts
<i>Note : All cases where any of the contracts has been classified as NPA and continues to be NPA as on the date of the exchange of information should be shown as Below Par)</i>			

* No. of contracts restructured during the relevant period	<25% of total number of contracts	25-50% of total number of contracts	> 50% of total number of contracts
<b>IV. Compliance with financial covenants</b>			
* Stock statement / Financial data	Timely	Delay upto 15 days	Delay over 15 days
* Creation of charge	Prompt	Delay upto 2 months	Delay over 2 months
<b>V. Company's internal systems and procedures</b>			
* Inventory Management	Adequate systems are in place	Adequate systems are in place but not adhered	Adequate systems are not in place
* Receivables Management	- do -	- do -	- do -
* Resource Allocation	- do -	- do -	- do -
* Control over Information	- do -	- do -	- do -
<b>VI. Quality of management</b>			
* Integrity	Reliable	Nothing adverse	Cannot be categorized in previous columns
* Expertise Competence/ Commitments	Professional & visionary	Have necessary experience	-do-
* Tract Record	Timely	Executions	-do-

**Annex- III****Part - I****Diligence Report**

To,

The Manager,

\_\_\_\_\_ (Name of the Bank)

I / We have examined the registers, records, books and papers of \_\_\_\_\_ Limited (the Company) as required to be maintained under the Companies Act, 1956 (the Act) and the rules made thereunder, the provisions of various statutes, wherever applicable, the provisions contained in the Memorandum and Articles of Association of the Company as well as the provisions contained in the Listing Agreement/s, if any, entered into by the Company with the recognized stock exchange/s, as may be applicable for the half year ended

on \_\_\_\_\_. In my / our opinion and to the best of my / our information and according to the examination carried out by me / us and explanations furnished to me / us by the Company, its officers and agents. I / We Report that in respect of the aforesaid period :

1. (a) The management of the Company is carried out by the Board of Directors comprising the following persons :  
(b) During the period under review the following changes took place:
2. (a) The shareholding pattern of the company is as under :  
(b) During the period under review the following changes took place:
3. The company has altered the following provisions of
  - (i) the Memorandum of Association during the period under review and has complied with the provisions of the Act.
  - (ii) the following Articles of Association during the period under review and has complied with the provisions of the Act.
4. The company has during the period under review, entered into the following transactions with business entities in which directors are interested.
5. The company has during the period under review, advanced loans, given guarantees and provided securities amounting to Rs. \_\_\_\_ to its directors and / or persons or firms or companies in which directors are interested.
6. The Company has during the period under review, made loans and investments; or given guarantees or provided securities to other business entities as under :
7. The amount borrowed by the Company from directors, members, public, financial institution(s) s, banks and others during the period under review is / are within the borrowing limits of the Company. The break-up of the company's borrowings is as under:
8. The Company has during the period under review, not defaulted in the repayment of any public deposits or unsecured loans and the Company or its Directors are not under the Defaulter's list of Reserve Bank of India or in the Specific Approval List of ECGC.
9. The Company has during the period under review, created, modified or satisfied charges on the assets of the company as under :
10. The Forex Exposure and Overseas Borrowings of the company are as under"
11. The Company has issued, offered and allotted all the securities to the persons entitled thereto and has also issued letters, coupons, warrants and certificates thereof to the concerned persons and also redeemed its preference shares / debentures and bought back its shares (wherever applicable) in compliance with the specified procedures and within the stipulated time.
12. The Company has insured all its assets including the secured assets.

13. The Company has complied with the terms and conditions, set forth by the lending institution at the time of availing the facility and also during the currency of the loan and has utilized the funds for the purposes for which these were borrowed.
14. The Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956.
15. The Company has paid all its statutory dues and that there are no arrears.
16. The Company has complied with the provisions stipulated in Section 372 A of the Companies Act in respect of its Inter Corporate loans and Investments.
17. The Company has complied with the applicable and mandatory Accounting Standards issued by the Institute of Chartered Accountants of India.
18. The Company has credited and paid to the Investor Education and Protection Fund all the unpaid dividends and other amounts required to be so credited.
19. A list of prosecutions initiated against or show cause notices received by the Company for alleged offences under the Act and also the fines and penalties or any other punishment imposed on the Company in such cases is attached.
20. The Company has complied with the various clauses of the Listing Agreement, if applicable.
21. The Company has deposited both Employees' and Employer's contribution to Provident Fund with the prescribed authorities.

*Note* : The qualification, reservation or adverse remarks, if any, may be stated at the relevant place(s).

Place :

Signature :

Date :

Name of Company Secretary :

C.P. No. :

**Part - II****Certification of Borrowal Companies by Chartered Accountants /  
Company Secretaries**

- (i) Terms of reference for stock audit are to be spelt out clearly by the Banks, so that the Chartered Accountants can give focused attention to such areas.
  - (ii) End-use verification of funds lent, if certified by Statutory Auditors, will be a good comfort to the Banks.
  - (iii) As Banks quite often deal with unlisted companies, disclosure requirements for such companies above a specific turnover may be made akin to those for listed companies, viz. consolidated balance sheet, segmental Reporting etc. Information on large shareholding also will be useful.
  - (iv) Further, the following additional certification either from Chartered Accountant or Company Secretary may also be thought of :-
    - (a) Company Directors not figuring in defaulters list (RBI / ECGC) / willful defaulters list etc.)
    - (b) Details of litigation above a specified cut off limit.
    - (c) A specific certificate, probably from the Company Secretary, regarding compliance with Section 372(A) of the Companies Act.
    - (d) Details of creation / modification / satisfaction of charges on the assets of the company, position regarding insurance, show cause notices received, finds and penalties awarded.
  - (v) As regards rotation of Auditors, for the sake of operational convenience, it is suggested they may be changed once every 5 years instead of every 3 years.
  - (vi) In order to avoid concentration, group companies may have different Statutory / Internal Auditors in case group turnover exceeds Rs.100 crores.
-



ANNEXURE C

**RBI CIRCULAR NO.  
UBD PCBN<sub>o</sub>. 36/13.05.000/2008-09**

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RESERVE BANK OF INDIA

*Date : Jan 21, 2009*

UCBs – Lending under Consortium Arrangement/Multiple Banking  
Arrangements

RBI/2008-2009/354

UBD.PCBNo. 36/13.05.000/2008-09

January 21, 2009

Chief Executive Officer  
All Primary Urban Co-operative Banks  
(As per List)

Dear Sir,

**Lending under Consortium Arrangement / Multiple Banking  
Arrangements**

As you are aware, various regulatory prescriptions regarding conduct of consortium / multiple banking / syndicate arrangements were withdrawn by Reserve Bank of India in October 1996 with a view to introducing flexibility in the credit delivery system and to facilitate smooth flow of credit. However, Central Vigilance Commission, Government of India, in the light of frauds involving consortium / multiple banking arrangements which have taken place recently, has expressed concerns on the working of Consortium Lending and Multiple Banking Arrangements in the banking system. The Commission has attributed the incidence of frauds mainly to the lack of effective sharing of information about the credit history and the conduct of the account of the borrowers among various banks.

2. The matter has been examined by us in consultation with the Indian Banks Association who are of the opinion that there is need for improving the sharing / dissemination of information among the banks about the status of the borrowers enjoying credit facilities from more than one bank. Accordingly, the banks are encouraged 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 in Annex I. In the case of existing lenders, all the banks may seek a declaration from their existing borrowers availing sanctioned limits of Rs.5.00 crore and above or wherever, it is in their knowledge that their borrowers are availing credit facilities from other banks, and introduce a system of exchange of information with other banks as indicated above.
  - (ii) Subsequently, banks should exchange information about the conduct of the borrowers' accounts with other banks in the format given in Annex II at least at quarterly intervals.
  - (iii) Obtain regular certification by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions that are in vogue, as per specimen given in Annex III.
  - (iv) Make greater use of credit reports available from CIBIL.
  - (v) The banks should incorporate suitable clauses in the loan agreements in future (at the time of next renewal in the case of existing facilities) regarding exchange of credit information so as to address confidentiality issues.
3. Please acknowledge receipt to the Regional Office concerned.

Yours faithfully,

(A.K.Khound)

Chief General Manager-in-Charge

### Annex - I

#### **Minimum Information to be Declared by Borrowing Entities to Banks while Approaching for Finance under Multiple Banking Arrangement**

##### **A. Details of borrowing arrangements from other banks (institution wise)**

I. Name and address of bank / institution	
II. Purpose for which borrowed	
III. Limit sanctioned (full details to be given, e.g. working capital / demand loan / term loan / short term loan) / foreign currency loan, corporate loan / line of credit / Channel financing contingent facilities like LC, BG, DPG (I & F) etc. Also, state L/C bills discounting / project wise finance availed)	

IV. Date of sanction	
V. Present outstanding	
VI. Overdues position, if any	
VII. Repayment terms (for demand loans, term loans, corporate loans, project - wise finance)	
VIII. Security offered (complete details of security both primary and collateral including specific cash flows assigned to project wise finance / loan raised & personal / corporate guarantee, to be furnished)	
IX. Requests for facilities which are under process	
[The information to be given for domestic and overseas borrowings from commercial banks, Financial Institutions and NBFCs]	

### **B. Miscellaneous Details**

I. CPs raised during the year and current outstanding	
II. Details of financing outside banking system e.g. L/C Bills discounting	
III. Main and allied activities with locations	
IV. Territory of sales and market share	
V. Details of financial aspects incl. DSCR Projections wherever applicable as per requirement of bank-Imp. Financial covenants, if any, agreed to / accepted with other lenders.	
VI. CID A/cs, within / outside financing banks, being operated, if any	
VII. Demands by statutory authorities / current status thereof	
VIII. Pending litigations	
IX. A declaration authorizing the bank to share information with other financing banks	

**Annex - II****Revised Format under Multiple Banking Arrangement Credit  
Information Exchange****Part - I***(Bio Data)*

I. Borrowing party's name and address
II. Constitution
III. Names of Directors / Partners
IV. Business activity
* Main
* Allied
V. Names of other financing banks
VI. Net worth of Directors / Partners
VII. Group affiliation, if any
VIII. Date on associate concerns, if banking with the same bank
IX. Changes in shareholding and management from the previous report, if any

**Part - II***(Financial)*

I. IRAC Classification
II. Internal Credit rating with narration
III. External Credit rating, if any
IV. Latest available Annual Report of the borrower      As on .....

**Part - III***(Exposure Details)*

I. Type of credit facilities, e.g. working capital loan/ demand loan / term loan / short term loan/ foreign currency loan, corporate loan / line of credit / Channel financing, contingent facilities like LC, BG & DPG (I & F) etc. Also, state L/C bills discounting / project wise finance availed)
II. Purpose of loan
III. Date of loan facilities (including temporary facilities)
IV. Amount sanctioned (facility wise)

V. Balance outstanding (facility wise)	
VI. Repayment terms	
VII. Security offered	
* Primary	
* Collateral	
* Personal / Corporate Guarantees	
* Extent of control over cash flow	
VIII. Defaults in term commitments / lease rentals/ others	
IX. Any other special information like court cases, statutory dues, major defaults, adverse internal/external audit observations	
<b>Part - IV</b>	
<i>(Experience)(*)</i>	
I. Conduct of funded facilities (based on cash management / tendency to overdraw)	
II. Conduct of contingent facilities (based on payment history)	
III. Compliance with financial covenants	
IV. Company's internal systems & procedures	
V. Quality of management	
VI. Overall Assessment	
(The above to be rated as good, satisfactory or below par only)	
(*) Broad guidelines for incorporating comments under this head is furnished in the next page	

**Broad Guidelines for Incorporating Comments under Part - VI  
(Experience) of the Credit Information Report**

	<i>Good</i>	<i>Satisfactory</i>	<i>Below Par</i>
<b>I. Conduct of funded facilities</b>			
* Over-drawings (No. of times)	Upto 4 times	5 to 6 times	Above 6 times
* Average period of adjustment	Within 1 month	Within 2 months	Beyond 2 months
* Extent of overdrawings (% of limit)	Upto 10%	10 to 20%	Above 20%
<b>II. Conduct of contingent facilities (Other than Derivatives)</b>			
* No. of Defaults	Upto 2 times	3 to 4 times	Above 4 times
* Average period of adjustment	Within 1 week	Within 2 weeks	Beyond 2 weeks
<b>III Compliance with financial covenants</b>			
* Stock statement / Financial data	Timely	Delay upto 15 days	Delay over 15 days
* Creation of charge	Prompt	Delay upto 2 months	Delay over 2 months
<b>IV. Company's internal systems and procedures</b>			
* Inventory Management	Adequate systems are in place	Adequate systems are in place but not adhered	Adequate systems are not in place
* Receivables Management	- do -	- do -	- do -
* Resource Allocation	- do -	- do -	- do -
* Control over Information	- do -	- do -	- do -
<b>V. Quality of management</b>			
* Integrity	Reliable	Nothing adverse	Cannot be categorized in previous columns
* Expertise Competence/ Commitments	Professional & visionary	Have necessary experience	-do-
* Tract Record	Timely	Executions	-do-

**Annex- III****Part - I**

**Diligence Report**

To,

The Manager,

\_\_\_\_\_ (Name of the Bank)

I / We have examined the registers, records, books and papers of \_\_\_\_\_ Limited (the Company) as required to be maintained under the Companies Act, 1956 (the Act) and the rules made thereunder, the provisions of various statutes, wherever applicable, the provisions contained in the Memorandum and Articles of Association of the Company as well as the provisions contained in the Listing Agreement/s, if any, entered into by the Company with the recognized stock exchange/s, as may be applicable for the half year ended on \_\_\_\_\_. In my / our opinion and to the best of my / our information and according to the examination carried out by me / us and explanations furnished to me / us by the Company, its officers and agents. I / We Report that in respect of the aforesaid period :

1. the management of the Company is carried out by the Board of Directors comprising the following persons :  
during the period under review the following changes took place:
2. the shareholding pattern of the company is as under :  
during the period under review the following changes took place:
3. the company has altered the following provisions of
  - (i) the Memorandum of Association during the period under review and has complied with the provisions of the Act.
  - (ii) the following Articles of Association during the period under review and has complied with the provisions of the Act.
4. the company has during the period under review, entered into the following transactions with business entities in which directors are interested.
5. the company has during the period under review, advanced loans, given guarantees and provided securities amounting to Rs. \_\_\_\_ to its directors and / or persons or firms or companies in which directors are interested.
6. the Company has during the period under review, made loans and investments; or given guarantees or provided securities to other business entities as under :
7. the amount borrowed by the Company from directors, members, public, financial institutions, banks and others during the period under review is / are within the borrowing limits of the Company. The break-up of the company's borrowings is as under:
8. the Company has during the period under review, not defaulted in the repayment of any public deposits or unsecured loans and the Company or its Directors are not under the Defaulter's list of Reserve Bank of

India or in the Specific Approval List of ECGC.

9. the Company has during the period under review, created, modified or satisfied charges on the assets of the company as under :
10. the Forex Exposure and Overseas Borrowings of the company are as under"
11. the Company has issued, offered and allotted all the securities to the persons entitled thereto and has also issued letters, coupons, warrants and certificates thereof to the concerned persons and also redeemed its preference shares / debentures and bought back its shares (wherever applicable) in compliance with the specified procedures and within the stipulated time.
12. the Company has insured all its secured assets.
13. the Company has complied with the terms and conditions, set forth by the lending institution at the time of availing the facility and also during the currency of the loan and has utilized the funds for the purposes for which these were borrowed
14. the Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956
15. the Company has insured fully all its assets
16. the Company/Directors are not in the willful defaulters' list of RBI
17. the Company/Directors are not in the Specific Approval List of ECGC
18. the Company has paid all its statutory dues and that there are no arrears
19. the Company has complied with the provisions stipulated in Section 372 A of the Companies Act in respect of its Inter Corporate loans and Investments
20. The Company has complied with the terms and conditions, set forth by the lending institution at the time of availing any facility and also during the currency of the loan
21. the Company has declared and paid dividends to its shareholders, as per the provisions of the Companies Act.
22. the Company has complied with the provisions stipulated in Section 372 A of the Companies Act in respect of its Inter Corporate loans and Investments
23. the Company has complied with the applicable and mandatory Accounting Standards issued by the Institute of Chartered Accountants of India
24. the Company has credited and paid to the Investor Education and Protection Fund all the unpaid dividends and other amounts required to be so credited
25. a list of prosecutions initiated against or show cause notices received by the Company for alleged offences under the Act and also the fines and penalties or any other punishment imposed on the Company in



such cases is attached

26. the Company has complied with the various clauses of the Listing Agreement, if applicable
27. the Company has deposited both Employees' and Employer's contribution to Provident Fund with the prescribed authorities.

*Note :* The qualification, reservation or adverse remarks, if any, may be stated at the relevant place(s).

Place :

Signature :

Date :

Name of Company Secretary :

C.P. No. :

### **Part - II**

#### **Certification of Borrowal Companies by Chartered Accountants / Company Secretaries**

- (i) Terms of reference for stock audit are to be spelt out clearly by the Banks, so that the Chartered Accountants can give focused attention to such areas.
  - (ii) End-use verification of funds lent, if certified by Statutory Auditors, will be a good comfort to the Banks.
  - (iii) As Banks quite often deal with unlisted companies, disclosure requirements for such companies above a specific turnover may be made akin to those for listed companies, viz. consolidated balance sheet, segmental Reporting etc. Information on large shareholding also will be useful.
  - (iv) Further, the following additional certification either from Chartered Accountant or Company Secretary may also be thought of :-
    - (a) Company Directors not figuring in defaulters list (RBI / ECGC) / willful defaulters list etc.)
    - (b) Details of litigation above a specified cut off limit.
    - (c) A specific certificate, probably from the Company Secretary, regarding compliance with Sec. 372 (a) of the Companies Act.
    - (d) Details of creation / modification / satisfaction of charges on the assets of the company, position regarding insurance, show cause notices received, finds and penalties awarded.
  - (v) As regards rotation of Auditors, for the sake of operational convenience, it is suggested they may be changed once every 5 years instead of every 3 years.
  - (vi) In order to avoid concentration, group companies may have different Statutory / Internal Auditors in case group turnover exceeds Rs.100 crores.
-

ANNEXURE D

**RBI CIRCULAR NO. BP.BC. 110/08.12.001**

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RBI/2008-2009/379

DBOD.No. BP.BC.110/08.12.001/2008-09

February 10, 2009

The Chairman & Managing Directors /  
Chief Executive Officers of  
All Scheduled Commercial Banks  
(Excluding RRBs and LABs)

Dear Sir,

**Lending under Consortium Arrangement /  
Multiple Banking Arrangements**

Please refer to Paragraph 2(iii) of our circular RBI/2008-09/183/  
DBOD.No.BP.BC.46 /08.12.001/2008-09 dated September 19, 2008  
on the captioned subject.

2. In terms of Paragraph 2(iii) of the above circular, in order to strengthen the information sharing system among banks in respect of the borrowers enjoying credit facilities from multiple banks, the banks are required to obtain regular certification by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions that are in vogue, as per specimen given in Annex III to the above circular.
3. In this context it is clarified that in addition to Company Secretaries, banks can also accept the certification by a Chartered Accountants & Cost Accountants. Further, on the basis of suggestions received from Indian Banks Association, Annex III - Part I & Part II (copy enclosed) has also been modified.

Yours faithfully,

**(P. Vijaya Bhaskar)**  
*Chief General Manager.*

*Encl.: As above.*

**Part I****DILIGENCE REPORT**

To,

The Manager,

\_\_\_\_\_ (Name of the Bank)

I/We have examined the registers, records, books and papers of \_\_\_\_\_ Limited having its registered office at ..... as required to be maintained under the Companies Act, 1956 (the Act) and the rules made thereunder, the provisions contained in the Memorandum and Articles of Association of the Company, the provisions of various statutes, wherever applicable, as well as the provisions contained in the Listing Agreement/s, if any, entered into by the Company with the recognized stock exchange/s for the half year ended on..... In my/our opinion and to the best of my/our information and according to the examination carried out by me/us and explanations furnished to me/us by the Company, its officers and agents. I/We report that in respect of the aforesaid period:

1. The management of the Company is carried out by the Board of Directors comprising of as listed in Annexure ....., and the Board was duly constituted. During the period under review the following changes that took place in the Board of Directors of the Company are listed in the Annexure ....., and such changes were carried out in due compliance with the provisions of the Companies Act, 1956.
2. The shareholding pattern of the company as on \_\_\_\_\_ was as detailed in Annexure .....:
 

During the period under review the changes that took place in the shareholding pattern of the Company are detailed in Annexure.....:
3. The company has altered the following provisions of
  - (i) The Memorandum of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose.
  - (ii) The Articles of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose.
4. The company has entered into transactions with business entities in which directors of the company were interested as detailed in Annexure..... .
5. The company has advanced loans, given guarantees and provided securities amounting to Rs. \_\_\_\_\_ to its directors and/or persons or firms or companies in which directors were interested, and has complied with Section 295 of the Companies Act , 1956.
6. The Company has made loans and investments; or given guarantees or provided securities to other business entities as detailed in

Annexure.... and has complied with the provisions of the Companies Act, 1956.

7. The amount borrowed by the Company from its directors, members, financial institutions, banks and others were within the borrowing limits of the Company.  
Such borrowings were made by the Company in compliance with applicable laws. The break up of the Company's domestic borrowings were as detailed in Annexure ..... :
8. The Company has not defaulted in the repayment of public deposits, unsecured loans, debentures, facilities granted by banks, financial institutions and nonbanking financial companies.
9. The Company has created, modified or satisfied charges on the assets of the company as detailed in Annexure.... Investments in wholly owned Subsidiaries and/or Joint Ventures abroad made by the company are as detailed in Annexure .....
10. Principal value of the forex exposure and Overseas Borrowings of the company as on ..... are as detailed in the Annexure under "
11. The Company has issued and allotted the securities to the persons-entitled thereto and has also issued letters, coupons, warrants and certificates thereof as applicable to the concerned persons and also redeemed its preference shares/debentures and bought back its shares within the stipulated time in compliance with the provisions of the Companies Act, 1956 and other relevant statutes.
12. The Company has insured all its secured assets.
13. The Company has complied with the terms and conditions, set forth by the lending bank/financial institution at the time of availing any facility and also during the currency of the facility.
14. The Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956.
15. The Company has insured fully all its assets.
16. The name of the Company and or any of its Directors does not appear in the defaulters' list of Reserve Bank of India.
17. The name of the Company and or any of 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 of any such dues.
19. The funds borrowed from banks/financial institutions have been used by the company for the purpose for which they were borrowed.
20. The Company has complied with the provisions stipulated in Section 372 A of the Companies Act in respect of its Inter Corporate loans and investments.
21. It has been observed from the Reports of the Directors and the Auditors that the Company has complied with the applicable Accounting Standards issued by the Institute of Chartered Accountants in India.

22. The Company has credited and paid to the Investor Education and Protection Fund within the stipulated time, all the unpaid dividends and other amounts required to be so credited.
23. Prosecutions initiated against or show cause notices received by the Company for alleged defaults/offences under various statutory provisions and also fines and penalties imposed on the Company and or any other action initiated against the Company and /or its directors in such cases are detailed in Annexure.....
24. The Company has (being a listed entity) complied with the provisions of the Listing Agreement.
25. The Company has deposited within the stipulated time both Employees' and Employer's contribution to Provident Fund with the prescribed authorities.

*Note* : The qualification, reservation or adverse remarks, if any, are explicitly stated may be stated at the relevant paragraphs above place(s).

Place : Signature:

Date : Name of Company Secretary/Firm:

C.P. No. :

## **Part II**

### **Certifications of Borrowal Companies by Chartered Accountants/ Company Secretaries/ Cost Accountants**

- (i) Terms of reference for stock audit are to be spelt out clearly by the Banks, so that the Chartered Accountants can give focused attention to such areas.
- (ii) End-use verification of funds lent, if certified by Statutory Auditors, will be a good comfort to the Banks.
- (iii) As Banks quite often deal with unlisted companies, disclosure requirements for such companies above a specific turnover may be made akin to those for listed companies, viz. consolidated balance sheet, segmental reporting etc. Information on large shareholding also will be useful.
- (iv) Further, the following additional certification either from Chartered Accountant or Company Secretary or Cost Accountants may also be thought of :-
  - (a) Company Directors not figuring in defaulters list (RBI/ECGC)/willful defaulters list etc.)
  - (b) Details of litigation above a specified cut off limit.
  - (c) A specific certificate, probably from the Company Secretary, regarding compliance with Sec. 372 (a) of the Companies Act.
  - (d) Details of creation/ modification/satisfaction of charges on the assets of the company, position regarding insurance, show cause notices received, finds and penalties awarded.

- (v) As regards rotation of Auditors, for the sake of operational convenience, it is suggested they may be changed once every 5 years instead of every 3 years.
  - (vi) In order to avoid concentration, group companies may have different Statutory/Internal Auditors in case group turnover exceeds Rs.100 crores.
-

ANNEXURE E

**RBI CIRCULAR NO.  
UBD.PCB.NO. 49/13.05.000/2008-09**

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RESERVE BANK OF INDIA

Date : Feb 12, 2009

**UCBs – Lending under Consortium Arrangement/Multiple  
Banking Arrangements**

RBI/2008-2009/382

UBD.PCB.No. 49 /13.05.000/2008-09

February 12 , 2009

The Chief Executive Officers of  
All Primary Urban Co-operative Banks  
(As per List)

Dear Sir / Madam,

**Lending under Consortium Arrangement / Multiple Banking  
Arrangements**

Please refer to our circular RBI/2008-09/354/UBD.PCB.No.36/  
13.05.000/2008-09 dated January 21, 2009 on the captioned subject.

2. In terms of Paragraph 2(iii) of the above circular, in order to strengthen the information sharing system among banks in respect of the borrowers enjoying credit facilities from multiple banks, the banks are required to obtain regular certification by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions that are in vogue, as per specimen given in **Annex III** to the above circular.
3. In this context it is clarified that in addition to Company Secretaries, banks can also accept the certification by Chartered Accountants & Cost Accountants. Further, on the basis of suggestions received from Indian Banks Association, **Annex III – Part I & Part II** (copy enclosed) has also been modified.

Yours faithfully,

**(Uma Shankar)**  
Chief General Manager.

Encl. : As above

**Part I**  
**Diligence Report**

To,  
The Manager,  
\_\_\_\_\_ (Name of the Bank)

I/We have examined the registers, records, books and papers of ..... Limited having its registered office at ..... as required to be maintained under the Companies Act, 1956 (the Act) and the rules made thereunder, the provisions contained in the Memorandum and Articles of Association of the Company, the provisions of various statutes, wherever applicable, as well as the provisions contained in the Listing Agreement/s, if any, entered into by the Company with the recognized stock exchange/s for the half year ended on..... In my/our opinion and to the best of my/our information and according to the examination carried out by me/us and explanations furnished to me/us by the Company, its officers and agents. I/We report that in respect of the aforesaid period:

1. The management of the Company is carried out by the Board of Directors comprising of as listed in Annexure ....., and the Board was duly constituted. During the period under review the following changes that took place in the Board of Directors of the Company are listed in the Annexure ....., and such changes were carried out in due compliance with the provisions of the Companies Act, 1956.
2. The shareholding pattern of the company as on ..... was as detailed in Annexure .....: During the period under review the changes that took place in the shareholding pattern of the Company are detailed in Annexure.....:
3. The company has altered the following provisions of
  - (i) The Memorandum of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose.
  - (ii) The Articles of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose.
4. The company has entered into transactions with business entities in which directors of the company were interested as detailed in Annexure.....
5. The company has advanced loans, given guarantees and provided securities amounting to Rs. .... to its directors and/or persons or firms or companies in which directors were interested, and has complied with Section – 295 of the Companies Act, 1956.
6. The Company has made loans and investments; or given guarantees or provided securities to other business entities as detailed in Annexure.... and has complied with the provisions of the Companies Act, 1956.



7. The amount borrowed by the Company from its directors, members, financial institutions, banks and others were within the borrowing limits of the Company. Such borrowings were made by the Company in compliance with applicable laws. The break up of the Company's domestic borrowings were as detailed in Annexure .....
8. The Company has not defaulted in the repayment of public deposits, unsecured loans, debentures, facilities granted by banks, financial institutions and non-banking financial companies.
9. The Company has created, modified or satisfied charges on the assets of the company as detailed in Annexure.... Investments in wholly owned Subsidiaries and/or Joint Ventures abroad made by the company are as detailed in Annexure .....
10. Principal value of the forex exposure and Overseas Borrowings of the company as on ..... are as detailed in the Annexure under.
11. The Company has issued and allotted the securities to the persons-entitled thereto and has also issued letters, coupons, warrants and certificates thereof as applicable to the concerned persons and also redeemed its preference shares/debentures and bought back its shares within the stipulated time in compliance with the provisions of the Companies Act, 1956 and other relevant statutes.
12. The Company has insured all its secured assets.
13. The Company has complied with the terms and conditions, set forth by the lending bank/financial institution at the time of availing any facility and also during the currency of the facility.
14. The Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956.
15. The Company has insured fully all its assets.
16. The name of the Company and or any of its Directors does not appear in the defaulters' list of Reserve Bank of India.
17. The name of the Company and or any of 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 of any such dues.
19. The funds borrowed from banks/financial institutions have been used by the company for the purpose for which they were borrowed.
20. The Company has complied with the provisions stipulated in Section 372 A of the Companies Act in respect of its Inter Corporate loans and investments.
21. It has been observed from the Reports of the Directors and the Auditors that the Company has complied with the applicable Accounting Standards issued by the Institute of Chartered Accountants in India.
22. The Company has credited and paid to the Investor Education and Protection Fund within the stipulated time, all the unpaid dividends and other amounts required to be so credited.

23. Prosecutions initiated against or show cause notices received by the Company for alleged defaults/offences under various statutory provisions and also fines and penalties imposed on the Company and or any other action initiated against the Company and /or its directors in such cases are detailed in Annexure.....
24. The Company has (being a listed entity) complied with the provisions of the Listing Agreement.
25. The Company has deposited within the stipulated time both Employees' and Employer's contribution to Provident Fund with the prescribed authorities.

*Note :* The qualification, reservation or adverse remarks, if any, are explicitly stated may be stated at the relevant paragraphs above place(s).

Place :

Signature:

Date :

Name of Company Secretary, Chartered Accountant, Cost Accountant/Firm:

C.P. No.:

## **Part II**

### **Certifications of Borrowal Companies by Chartered Accountants/ Company Secretaries/Cost Accountants**

- (i) Terms of reference for stock audit are to be spelt out clearly by the Banks, so that the Chartered Accountants can give focused attention to such areas.
- (ii) End-use verification of funds lent, if certified by Statutory Auditors, will be a good comfort to the Banks.
- (iii) As Banks quite often deal with unlisted companies, disclosure requirements for such companies above a specific turnover may be made akin to those for listed companies, viz. consolidated balance sheet, segmental reporting etc. Information on large shareholding also will be useful.
- (iv) Further, the following additional certification either from Chartered Accountant or Company Secretary or Cost Accountants may also be thought of :-
  - (a) Company Directors not figuring in defaulters list (RBI/ECGC)/willful defaulters list etc.)
  - (b) Details of litigation above a specified cut off limit.
  - (c) A specific certificate, probably from the Company Secretary, regarding compliance with Section 372 (a) of the Companies Act.
  - (d) Details of creation/modification/satisfaction of charges on the assets

of the company, position regarding insurance, show cause notices received, finds and penalties awarded.

- (v) As regards rotation of Auditors, for the sake of operational convenience, it is suggested they may be changed once every 5 years instead of every 3 years.
  - (vi) In order to avoid concentration, group companies may have different Statutory/ Internal Auditors in case group turnover exceeds Rs.100 crores.
-

## ANNEXURE F

### **INDICATIVE LIST OF APPLICABLE LAWS**

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#### **A. Corporate Laws**

1. Companies Act, 1956 and the various Rules and Regulations framed there under, MCA-21 requirements and procedures
2. Limited Liability Partnership Act, 2008
3. Foreign Exchange Management Act, 1999 and the various Rules and Regulations framed thereunder
3. Competition Act, 2002
4. Secretarial Standards/Accounting Standards/Cost Accounting Standards issued by ICSI/ICAI/ICWAI, respectively.
5. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
6. Foreign Contribution Regulation Act, 1976
7. Prevention of Money Laundering Act, 2005
8. Emblems and Names (Prevention of Improper Use) Act, 1947
9. Industrial Licensing (where applicable)
10. Special Economic Zones Act, 2005
11. SEZ and STP regulations (where applicable).

#### **B. Securities Laws**

1. Listing Agreement with the Stock Exchanges
2. Rules, Regulations and Guidelines issued by SEBI with particular emphasis on Insider Trading and Takeover Code under SEBI Act, 1992
3. Depositories Act, 1996 and Demat related matters

#### **C. Commercial Laws**

1. Indian Contract Act, 1872
2. Sale of Goods Act, 1930
3. Transfer of Property Act, 1882
4. Negotiable Instruments Act, 1881
5. Arbitration and Conciliation Act, 1996
6. Intellectual Property laws – including those on Trade Marks, Copyrights, Patents and Geographical Indications

7. Standards of Weights and Measures Act, 1976
8. Standards of Weights and Measures (Packaged Commodities) Rules, 1977
9. Essential Commodities Act, 1955.

**D. Fiscal Laws**

1. Finance Act
2. Income Tax Act, 1961
3. Central Excise Act, 1944
4. Customs Act, 1962
5. Wealth Tax Act, 1957
6. Central Sales Tax, 1956/State Sales Tax Laws/Value Added Tax Act.
7. Service Tax.

**E. Labour Laws**

1. Payment of Wages Act, 1936
2. Minimum Wages Act, 1948
3. Payment of Bonus Act, 1965
4. Payment of Gratuity Act, 1972
5. Employees' Provident Funds and Miscellaneous Provisions Act, 1952
6. Employees' State Insurance Act, 1948
7. Workmen's Compensation Act, 1923
8. Contract Labour (Regulation and Abolition) Act, 1970
9. Equal Remuneration Act, 1976
10. Industrial Employment (Standing Orders) Act, 1946

**F. Pollution/Environment related Laws**

1. Air (Prevention and Control of Pollution) Act, 1981
2. Water (Prevention and Control of Pollution) Act, 1974
3. Water (Prevention and Control of Pollution) Cess Act, 1974
4. Environment Protection Act, 1986
5. Public Liability Insurance Act, 1991
6. The National Environment Appellate Authority Act, 1997
7. National Environment Appellate Authority (Appeal) Rules, 1997
8. The National Environment Tribunal Act, 1995.

**G. Industry Specific Laws**

Legislations applicable to specific categories of industries – electricity, power generation and transmission, insurance, banking, chit funds, etc.

**H. Local Laws**

These would include Stamp Act, Registration Act, municipal and civic administration laws, shops and establishments, etc.

*Note* : Applicable laws may be suitably added or deleted to/from the above list as required.

In addition, it would be a good practice to cover the following as a part of it :

- (a) Any agreement on stamp paper or plain paper
  - (b) Agreements with dealers, distributors, service dealers, OEMs, etc and letters terminating these arrangements
  - (c) Supply contracts, purchase orders and order acceptances
  - (d) Tender documents
  - (e) Bank and other guarantees
  - (f) Indemnities, legal undertakings and comfort letters
  - (g) Lease and rent agreements
  - (h) Service contracts, agreements or letters of appointments
  - (i) Consultancy or technical assistance agreements
  - (j) Tax collection or payment documents
  - (k) Suits, petitions and affidavits
  - (l) Reply to show-cause notices or demand notices
  - (m) Statutory returns, forms and notices
  - (n) Any document required to be executed under the common seal of the company
  - (o) Mortgage, hypothecation or any such document creating a charge on the company's moveable or immovable property
  - (p) Notices and other documents in disciplinary proceedings against employees
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## ANNEXURE G

### **GIST OF RBI SCHEMES OF DEFAULTER'S LIST**

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#### **1. Scheme on collection and dissemination of information regarding defaulters of Rs.1 crore and above**

In its circular DBOD No.BC/CIS/47/20.16.002/94 dated April 23, 1994 Reserve Bank of India (RBI) has advised the scheduled commercial banks and financial institutions (FIs) that the Hon'ble Finance Minister in his Budget Speech on February 28, 1994, announced that in order to alert the banks and financial institutions (FIs) and put them on guard against borrowers who have defaulted in their dues to other lending institutions, the RBI was putting in place arrangements for circulating among banks and FIs names of defaulting borrowers above a threshold limit. He further mentioned that the Reserve Bank would also publish a list of defaulting borrowers in cases where suits have been filed by banks and FIs.

Accordingly, the Reserve Bank of India has prepared a scheme to collect and disseminate information on the defaulters of Rs.1 crore and above. The salient features of the scheme, as modified from time to time, are as under at present:

- (i) The banks and FIs are required to submit in prescribed format to the Reserve Bank of India as on March 31 and September 30 every year the details of the non-suit filed borrowal accounts which have been classified as doubtful and loss accounts by them with outstandings (both under funded and non-funded) aggregating Rs.1 crore and above.
- (ii) The data on defaulters so received from banks/FIs, as mentioned above is circulated in a consolidated form by RBI to the banks and FIs as on March 31 and September 30 every year for their confidential use. It is the responsibility of the banks/FIs to ensure accuracy of their data so furnished to RBI and RBI is not liable for any discrepancy/inaccuracy in this regard.

#### **2. Scheme on collection and dissemination of information on cases of wilful defaults of Rs. 25 lakh and above**

- (i) Pursuant to the instructions of the Central Vigilance Commission, Reserve Bank of India introduced above scheme in terms of circular

DBOD No.BC.DL (W)12/20.16.002(1)/98-99 dated February 20, 1999 addressed to banks and notified FIs under which it collects and disseminates information from/to them on cases of wilful defaults of Rs.25 lakh and above on a quarterly basis. In terms of circular DBOD No. DL(W)BC.110/20.16.003/2001-02 dated May 30, 2002, the term 'wilful default' has been redefined in supersession of earlier definition/illustrations, as follows:

"A wilful default would be deemed to have occurred if any of the following events is noted:

- (a) The unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations.
- (b) The unit has defaulted in meeting its payment/repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
- (c) The unit has defaulted in meeting its payment/repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets."

The term 'diversion of funds', referred to at para (b) above, would be construed to include any one of the under noted occurrences:

- (i) Utilization of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;
- (ii) Deploying borrowed funds for purposes/activities or creation of assets other than those for which the loan was sanctioned;
- (iii) Transferring funds to the subsidiaries/Group companies or other corporates by whatever modalities;
- (iv) Routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;
- (v) Investment in other companies by way of acquiring equities/ debt instruments without approval of lenders;
- (vi) Shortfall in deployment of funds vis-à-vis the amounts disbursed /drawn and the difference not being accounted for.

The term 'siphoning of funds', referred to at para (c) above, should be construed to occur if any funds borrowed from banks/FIs are utilised for purposes un-related to the operations of the borrower, to the detriment of the financial health of the entity or of the



lender. The decision as to whether a particular instance amounts to siphoning of funds would have to be a judgement of the lenders based on objective facts and circumstances of the case.

Certain penal measures have been stipulated against the wilful defaulters and others in the above-said circular.

- (ii) The salient features of the scheme, as modified from time to time, are as under at present:
  - (a) The banks and FIs are required to submit in prescribed format to the Reserve Bank of India as on March 31, June 30, September 30 and December 31 every year the details of the non-suit filed borrowal accounts which have been classified as wilful defaulters as per above-said norms by them with outstandings aggregating Rs.25 lakh and above.
  - (b) The data on defaulters so received from banks/FIs, as mentioned above is circulated in a consolidated form by RBI to the banks and FIs as on March 31, June 30, September 30 and December 31 every year for their confidential use. It is the responsibility of the banks/FIs to ensure accuracy of their data so furnished to RBI and RBI is not liable for any discrepancy/inaccuracy in this regard.

### **3. Redressal of grievances of wilful defaulters**

As the banks/FIs did not have mechanism for redressal of grievances in respect of borrowers classified as wilful defaulters, they were advised, in terms of circular DBOD No.BC.DL.7/20.16.003/2003-04 dated July 29, 2003 to form a Committee of higher functionaries headed by the Executive Director for classification of borrowal accounts as wilful defaulters, and also a Committee headed by Chairman & Managing Director for giving a hearing to borrowers who represent that they have been wrongly classified as wilful defaulters. They were further advised, as per circular DBOD No.DL.BC. 94/20.16.003/2003-04 dated June 17, 2004, that the concerned borrower should be suitably advised about the proposal to classify him as wilful defaulter along with the reasons therefore and he should be given reasonable time (say 15 days) for making representation thereagainst, if he so desires.

### **4. Collection and dissemination of information on defaulters by CIBIL**

Under the above schemes, RBI also was periodically collecting and disseminating credit information on suit-filed accounts of defaulters till the year 2002. However, in terms of circular DBOD No.DL.BC.111/20.16.001/2001-02 dated June 4, 2002, banks and financial institutions (FIs) have been advised to submit information on defaulters list (suit-filed accounts) of Rs.1 crore and above and wilful defaulters list (suit-filed accounts) of Rs.25 lakh and above as on March 31, 2003 and onwards, to Credit Information Bureau (India) Ltd. (CIBIL) only and

not to Reserve Bank of India (RBI), as CIBIL will be taking over dissemination of same and Reserve Bank of India will continue to deal with, as hitherto, data relating to non-suit filed accounts of defaulters list of Rs.1 crore and above and wilful defaulters list of Rs.25 lakh and above, which are disseminated only to banks for their confidential use. Since the CIBIL has been disseminating defaulter lists of suit-filed accounts as on March 31, 2003 and onwards, as mentioned above, Reserve Bank of India has withdrawn its said lists for the period prior to March 31, 2003 from its website. The correspondence, if any, relating to the said defaulter lists of CIBIL may be undertaken with the CIBIL/concerned banks/FIs. A Press Release dated May 20, 2004 to this effect has also been issued.

#### **Public Notice**

It has been brought to our notice that M/s. Compact Disc India Ltd., Chandigarh, has introduced a website "loandefaulters.com", wherein information relating to defaulting borrowers, who have availed loan/financial assistance from the banks/financial institutions, has been published. Disclaimer clause given in the above website states, inter alia, that the information given is as advised by Reserve Bank of India (RBI), and if for any valid reason, any person feels aggrieved that his/her name as director should not find place in the list of defaulting company, he/she may take up the matter directly with the bank or lending institution or Reserve Bank of India for necessary action. It is hereby clarified that the Reserve Bank of India has not authorized either the makers of "loandefaulters.com" or any other person to publish or republish, in the same form or in the modified form, any details available in the booklet/website of the Reserve Bank and the Reserve Bank shall not be liable to any person for any action of such parties. However, Reserve Bank has authorized Credit Information Bureau (India) Ltd. (CIBIL) to publish the defaulters list (suit-filed accounts) of Rs.1 crore and above and wilful defaulters list (suit-filed accounts) of Rs.25 lakh and above, as on March 31, 2003 and onwards.

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## ANNEXURE H

# **MASTER CIRCULAR ON 'WILFUL DEFAULTERS'**

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### **Purpose**

The Reserve Bank of India decided in April 1999 to introduce a scheme under which the banks and notified All India Financial Institutions were required to submit to RBI the details of the wilful defaulters with outstandings of Rs.25 lakh and above. This was pursuant to the instructions of the Central Vigilance Commission for collection of information on wilful defaults of Rs.25 lakhs and above by RBI and dissemination to the reporting banks and FIs. This circular prescribes the norms for declaring an individual borrower a wilful defaulter, penal measures that can be taken against a wilful defaulter, roles and responsibilities of a audit and inspecting teams while they deal with such accounts and a mechanism by which the grievance can be addressed if any party feels aggrieved on account of inclusion of its name in the wilful defaulters list. The circular also deals with the criminal action that a bank can take against the wilful defaulters and precautions a bank can take in this regard before giving credit facilities to the borrowers.

### **Previous instructions**

The Master Circular incorporates all the instructions/guidelines issued on cases of wilful default, which are operational as on date.

### **Application**

To all scheduled commercial banks (excluding RRBs and LABs) and All India Notified Financial Institutions.

### **Structure**

1. Introduction
2. Guidelines issued on wilful defaulters on May 30, 2002
  - 2.1 Definition of Wilful Default
  - 2.2 Diversion and siphoning of funds
  - 2.3 Cut-off limits
  - 2.4 End-use of Funds
  - 2.5 Penal measures
  - 2.6 Guarantees furnished by group companies

- 2.7 Role of Auditors
- 2.8 Role of Internal Audit / Inspection
- 2.9 Reporting to RBI / CIBIL
- 3. Grievances Redressal Mechanism
- 4. Criminal Action against Wilful Defaulters
  - 4.1 J P C recommendations
  - 4.2 Monitoring of End Use
  - 4.3 Criminal Action by Banks / FIs
- 5. Reporting names of Directors
  - 5.1 Need for Ensuring Accuracy
  - 5.2 Position regarding Independent & Nominee Directors
  - 5.3 Government Undertakings
- 6. Annex I – Reporting Format  
Annex II – List of Circulars consolidated

## 1. Introduction

Pursuant to the instructions of the Central Vigilance Commission for collection of information on wilful defaults of Rs.25 lakhs and above by RBI and dissemination to the reporting banks and FIs, a scheme was framed under which the banks and notified All India Financial Institutions were required to submit to RBI the details of the wilful defaulters. Wilful default broadly covered the following:

- (a) Deliberate non-payment of the dues despite adequate cash flow and good network;
- (b) Siphoning off of funds to the detriment of the defaulting unit;
- (c) Assets financed either not been purchased or been sold and proceeds have misutilised;
- (d) Misrepresentation / falsification of records;
- (e) Disposal / removal of securities without bank's knowledge;
- (f) Fraudulent transactions by the borrower.

The above scheme came into force with effect from 1st April 1999. Accordingly, banks and FIs started reporting all cases of wilful defaults, which occurred or were detected after 31st March 1999 on a quarterly basis. It covered all non-performing borrowal accounts with outstandings (funded facilities and such non-funded facilities which are converted into funded facilities) aggregating Rs.25 lakhs and above identified as wilful default by a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs. Banks/FIs were advised that they should examine all cases of wilful defaults of Rs 1.00 crore and above for filing of suits and also consider criminal action wherever instances of cheating/fraud by the defaulting borrowers were detected. In case of consortium/multiple lending, banks and FIs were advised that they report

wilful defaults to other participating/financing banks also. Cases of wilful defaults at overseas branches were required to be reported if such disclosure is permitted under the laws of the host country.

The above scheme was in addition to the *Scheme of Disclosure of Information on Defaulting Borrowers of banks and FIs* introduced in April 1994, vide RBI Circular DBOD.No.BC/CIS/47/20.16.002/94 dated 23 April 1994.

## 2. Guidelines issued on wilful defaulters (May 30, 2002)

Considering the concerns expressed over the persistence of wilful default in the financial system in the 8th Report of the Parliament's Standing Committee on Finance on Financial Institutions, the Reserve Bank of India, in consultation with the Government of India, constituted in May 2001 a Working Group on Wilful Defaulters (WGWD) under the Chairmanship of Shri S. S. Kohli, the then Chairman of the Indian Banks' Association, for examining some of the recommendations of the Committee. The Group submitted its report in November 2001. The recommendations of the WGWD were further examined by an In House Working Group constituted by the Reserve Bank. Accordingly, the banks/FIs were advised on May 30, 2002 for implementation, with immediate effect, as under.

### 2.1 Definition of wilful default

The term "wilful default" has been redefined in supersession of the earlier definition as under:

A "wilful default" would be deemed to have occurred if any of the following events is noted :-

- (a) The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.
- (b) The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
- (c) The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets."

### 2.2 Diversion and siphoning of funds

The terms "diversion of funds" and "siphoning of funds" should be construed to mean the following:-

- 2.2.1 Diversion of funds, referred to at para 2.1(b) above, would be construed to include any one of the undernoted occurrences:
  - (a) utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;

- (b) deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;
- (c) transferring funds to the subsidiaries / Group companies or other corporates by whatever modalities;
- (d) routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;
- (e) investment in other companies by way of acquiring equities / debt instruments without approval of lenders;
- (f) shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.

2.2.2 Siphoning of funds, referred to at para 2.1(c) above, should be construed to occur if any funds borrowed from banks / FIs are utilised for purposes un-related to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. The decision as to whether a particular instance amounts to siphoning of funds would have to be a judgement of the lenders based on objective facts and circumstances of the case.

The identification of the wilful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions/incidents. The default to be categorised as wilful must be intentional, deliberate and calculated.

### 2.3 *Cut-off limits*

While the penal measures indicated at para 2.5 below would normally be attracted by all the borrowers identified as wilful defaulters or the promoters involved in diversion / siphoning of funds, keeping in view the present limit of Rs. 25 lakh fixed by the Central Vigilance Commission for reporting of cases of wilful default by the banks/FIs to RBI, any wilful defaulter with an outstanding balance of Rs. 25 lakh or more, would attract the penal measures stipulated at para 2.5 below. This limit of Rs. 25 lakh may also be applied for the purpose of taking cognisance of the instances of 'siphoning' / 'diversion' of funds.

### 2.4 *End-use of Funds*

In cases of project financing, the banks / FIs seek to ensure end use of funds by, inter alia, obtaining certification from the Chartered Accountants for the purpose. In case of short-term corporate / clean loans, such an approach ought to be supplemented by 'due diligence' on the part of lenders themselves, and to the extent possible, such loans should be limited to only those borrowers whose integrity and reliability are above board. The banks and FIs, therefore, should not

depend entirely on the certificates issued by the Chartered Accountants but strengthen their internal controls and the credit risk management system to enhance the quality of their loan portfolio. Needless to say, ensuring end-use of funds by the banks and the FIs should form a part of their loan policy document for which appropriate measures should be put in place. The following are some of the illustrative measures that could be taken by the lenders for monitoring and ensuring end-use of funds:

- (a) Meaningful scrutiny of quarterly progress reports / operating statements / balance sheets of the borrowers;
- (b) Regular inspection of borrowers' assets charged to the lenders as security;
- (c) Periodical scrutiny of borrowers' books of accounts and the no-lien accounts maintained with other banks;
- (d) Periodical visits to the assisted units;
- (e) System of periodical stock audit, in case of working capital finance;
- (f) Periodical comprehensive management audit of the 'Credit' function of the lenders, so as to identify the systemic-weaknesses in the credit administration.

(It may be kept in mind that this list of measures is only illustrative and by no means exhaustive.)

### 2.5 *Penal measures*

In order to prevent the access to the capital markets by the wilful defaulters, a copy of the list of wilful defaulters (non-suit filed accounts) and list of wilful defaulters (suit-filed accounts) are forwarded to SEBI by RBI and Credit Information Bureau (India) Ltd. (CIBIL) respectively.

The following measures should be initiated by the banks and FIs against the wilful defaulters identified as per the definition indicated at paragraph 2.1 above:

- (a) No additional facilities should be granted by any bank / FI to the listed wilful defaulters. In addition, the entrepreneurs / promoters of companies where banks / FIs have identified siphoning / diversion of funds, misrepresentation, falsification of accounts and fraudulent transactions should be debarred from institutional finance from the scheduled commercial banks, Development Financial Institutions, Government owned NBFCs, investment institutions etc. for floating new ventures for a period of 5 years from the date the name of the wilful defaulter is published in the list of wilful defaulters by the RBI.
- (b) The legal process, wherever warranted, against the borrowers / guarantors and foreclosure of recovery of dues should be initiated expeditiously. The lenders may initiate criminal proceedings against wilful defaulters, wherever necessary.

- (c) Wherever possible, the banks and FIs should adopt a proactive approach for a change of management of the wilfully defaulting borrower unit.
- (d) A covenant in the loan agreements, with the companies in which the banks/notified FIs have significant stake, should be incorporated by the banks / FIs to the effect that the borrowing company should not induct a person who is a promoter or director on the Board of a company which has been identified as a wilful defaulter as per the definition at paragraph 2.1 above and that in case, such a person is found to be on the Board of the borrower company, it would take expeditious and effective steps for removal of the person from its Board.

It would be imperative on the part of the banks and FIs to put in place a transparent mechanism for the entire process so that the penal provisions are not misused and the scope of such discretionary powers are kept to the barest minimum. It should also be ensured that a solitary or isolated instance is not made the basis for imposing the penal action.

#### 2.6 *Guarantees furnished by group companies*

While dealing with wilful default of a single borrowing company in a Group, the banks / FIs should consider the track record of the individual company, with reference to its repayment performance to its lenders. However, in cases where a letter of comfort and / or the guarantees furnished by the companies within the Group on behalf of the wilfully defaulting units are not honoured when invoked by the banks / FIs, such Group companies should also be reckoned as wilful defaulters.

#### 2.7 *Role of auditors*

In case any falsification of accounts on the part of the borrowers is observed by the banks / FIs, and if it is observed that the auditors were negligent or deficient in conducting the audit, they should lodge a formal complaint against the auditors of the borrowers with the Institute of Chartered Accountants of India (ICAI) to enable the ICAI to examine and fix accountability of the auditors.

With a view to monitoring the end-use of funds, if the lenders desire a specific certification from the borrowers' auditors regarding diversion/siphoning of funds by the borrower, the lender should award a separate mandate to the auditors for the purpose. To facilitate such certification by the auditors the banks and FIs will also need to ensure that appropriate covenants in the loan agreements are incorporated to enable award of such a mandate by the lenders to the borrowers / auditors.

#### 2.8 *Role of Internal Audit / Inspection*

The aspect of diversion of funds by the borrowers should be adequately looked into while conducting internal audit/inspection of their offices/branches and periodical reviews on cases of wilful defaults should be submitted to the Audit Committee of the bank.



### 2.9 Reporting to RBI / CIBIL

Bank/FIs should submit the list of suit-filed accounts of wilful defaulters of Rs.25 lakh and above as at end-March, June, September and December every year to Credit Information Bureau (India) Ltd. (CIBIL) and/or any other credit information company which has obtained / would obtain certificate of registration from RBI in terms of Section 5 of the Credit Information Companies (Regulation) Act, 2005 and of which it is a member, from the quarter ended on March 31, 2003. Banks/FIs should, however, submit the quarterly list of wilful defaulters where suits have not been filed only to RBI in the format given in Annex 1.

## 3. Grievances Redressal Mechanism

Banks/FIs should take the following measures in identifying and reporting instances of wilful default:

- (i) With a view to imparting more objectivity in identifying cases of wilful default, decisions to classify the borrower as wilful defaulter should be entrusted to a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs as decided by the Board of the concerned bank/FI.
- (ii) The decision taken on classification of wilful defaulters should be well documented and supported by requisite evidence. The decision should clearly spell out the reasons for which the borrower has been declared as wilful defaulter vis-à-vis RBI guidelines.
- (iii) The borrower should thereafter be suitably advised about the proposal to classify him as wilful defaulter along with the reasons therefor. The concerned borrower should be provided reasonable time (say 15 days) for making representation against such decision, if he so desires, to a Committee headed by the Chairman and Managing Director.
- (iv) A final declaration as 'wilful defaulter' should be made after a view is taken by the Committee on the representation and the borrower should be suitably advised.

## 4. Criminal Action against Wilful Defaulters

### 4.1 J.P.C. Recommendations

Reserve Bank examined, the issues relating to checking wilful defaults in consultation with the Standing Technical Advisory Committee on Financial Regulation in the context of the following recommendations of the JPC and in particular, on the need for initiating criminal action against concerned borrowers, viz.

- (a) It is essential that offences of breach of trust or cheating construed to have been committed in the case of loans should be clearly defined under the existing statutes governing the banks, providing for criminal action in all cases where the borrowers divert the funds with malafide intentions.

- (b) It is essential that banks closely monitor the end-use of funds and obtain certificates from the borrowers certifying that the funds have been used for the purpose for which these were obtained.
- (c) Wrong certification should attract criminal action against the borrower.

#### 4.2 *Monitoring of End Use*

Banks / FIs should closely monitor the end-use of funds and obtain certificates from borrowers certifying that the funds are utilised for the purpose for which they were obtained. In case of wrong certification by the borrowers, banks / FIs may consider appropriate legal proceedings, including criminal action wherever necessary, against the borrowers.

#### 4.3 *Criminal Action by Banks / FIs*

It is essential to recognise that there is scope even under the existing legislations to initiate criminal action against wilful defaulters depending upon the facts and circumstances of the case under the provisions of Sections 403 and 415 of the Indian Penal Code (IPC) 1860. Banks / FIs are, therefore, advised to seriously and promptly consider initiating criminal action against wilful defaulters or wrong certification by borrowers, wherever considered necessary, based on the facts and circumstances of each case under the above provisions of the IPC to comply with our instructions and the recommendations of JPC.

It should also be ensured that the penal provisions are used effectively and determinedly but after careful consideration and due caution. Towards this end, banks / FIs are advised to put in place a transparent mechanism, with the approval of their Board, for initiating criminal proceedings based on the facts of individual case.

### **5. Reporting names of Directors**

#### 5.1 *Need for Ensuring Accuracy*

RBI / CIBIL disseminate information on non-suit filed and suit filed accounts respectively, as reported to them by the banks / FIs and responsibility for reporting correct information and also accuracy of facts and figures rests with the concerned banks and financial institutions. Therefore, banks and financial institutions should take immediate steps to update their records and ensure that the names of current directors are reported. In addition to reporting the names of current directors, it is necessary to furnish information about directors who were associated with the company at the time the account was classified as defaulter, to put the other banks and financial institutions on guard. Banks and FIs may also ensure the facts about directors, wherever possible, by cross-checking with Registrar of Companies.

#### 5.2 *Position regarding Independent and Nominee directors*

Professional Directors who associate with companies for their expert knowledge act as independent directors. Such independent directors

apart from receiving director's remuneration do not have any material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in the judgment of Board may affect their independent judgment. As a guiding principle of disclosure, no material fact should be suppressed while disclosing the names of a company that is a defaulter and the names of all directors should be published. However, while doing so, a suitable distinguishing remark should be made clarifying that the concerned person was an independent director. Similarly the names of directors who are nominees of government or financial institutions should also be reported but a suitable remark 'nominee director' should be incorporated.

Therefore, against the names of Independent Directors and Nominee Directors, they should indicate the abbreviations "Ind" and "Nom" respectively in brackets to distinguish them from other directors.

### 5.3 *Government Undertakings*

In the case of Government undertakings, it should be ensured that the names of directors are not to be reported. Instead, a legend "Government of \_\_\_\_\_ undertaking" should be added.

**Annex I****Format for submission of data on cases of wilful default (non-suit filed accounts) of Rs. 25 lakh & above to RBI on quarterly basis**

The banks/FIs are required to use the following structure (with the same field names) while submitting data of wilful defaulters (non-suit filed accounts) in floppy diskettes to RBI on quarterly basis:

<i>Field</i>	<i>Field Name</i>	<i>Type</i>	<i>Width</i>	<i>Description</i>	<i>Remarks</i>
1	SCTG	Numeric	1	Category of bank/FI	Number 1/2/4/6/8 should be fed 1 SBI and its associate banks 2 Nationalised banks 4 Foreign banks 6 Private Sector Banks 8 Financial Institutions
2	BKNM	Character	40	Name of bank/FI	Name of the bank/FI
3	BKBR	Character	30	Branch name	Name of the branch
4	STATE	Character	15	Name of state	Name of state in which branch is situated
5	SRNO	Numeric	4	Serial No.	Serial No.
6	PRTY	Character	45	Name of Party	The legal name
7	REG-ADDR	Character	96	Registered address	Registered Office address
8	OSAMT	Numeric	6	Outstanding amount in Rs. lakhs (Rounded off)	
9	SUIT	Character	4	Suit filed or not	Type 'SUIT' in case suit is filed. For other cases this field should be kept blank.
10	OTHER_BK	Character	40	Name of other banks/ FIs	The names of other banks/FIs from whom the party has availed credit facility should be indicated. The names may be fed in abbreviated form e.g. BOB for Bank of Baroda, SBI for State Bank of India etc.

<i>Field</i>	<i>Field Name</i>	<i>Type</i>	<i>Width</i>	<i>Description</i>	<i>Remarks</i>
11	DIR1	Character	40	Name of director	<p>(a) Full name of Director should be indicated.</p> <p>(b) In case of Government companies the legend "Govt. of _____ undertaking" alone should be mentioned.</p> <p>(c) Against the names of nominee directors of banks/ FIs/ Central Govt./ State Govt., abbreviation 'Nom' should be indicated in the brackets.</p> <p>(d) Against the name of independent directors, abbreviation 'Ind' should be indicated in the brackets.</p> <p>(e) In the case of Directors who held office at the time the account of the borrower entity was classified as defaulter, but are no longer on its Board, the symbol @ should be indicated in brackets against their names.</p>
12	DIR2	Character	40	Name of director	— do —
13	DIR3	Character	40	Name of director	— do —
14	DIR4	Character	40	Name of director	— do —
15	DIR5	Character	40	Name of director	— do —

<i>Field</i>	<i>Field Name</i>	<i>Type</i>	<i>Width</i>	<i>Description</i>	<i>Remarks</i>
16	DIR6	Character	40	Name of director	— do —
17	DIR7	Character	40	Name of director	— do —
18	DIR8	Character	40	Name of director	— do —
19	DIR9	Character	40	Name of director	— do —
20	DIR10	Character	40	Name of director	— do —
21	DIR11	Character	40	Name of director	— do —
22	DIR12	Character	40	Name of director	— do —
23	DIR13	Character	40	Name of director	— do —
24	DIR14	Character	40	Name of director	— do —
Total bytes			841		

- (1) If total numbers of directors exceed 14, the name of additional directors may be entered in blank spaces available in the other directors' columns.
- (2) The data / information should be submitted in the above format in 3.5" floppy diskette as .dbf file only. While submitting the floppy diskette, the banks/FIs should ensure that:
  - the floppy is readable and is not corrupted / virus-affected.
  - the floppy is labeled properly indicating name of the bank, name of the list and period to which the list belongs, and the name of list indicated on label and in the letter are same.
  - the name and width of each of the fields and order of the fields is strictly as per the above format.
  - records with outstanding amount of less than Rs.25 lakh have not been included.
  - no suit-filed account has been included.
  - use of following types of words have been avoided (as the fields can not be properly indexed) : 'M/s', 'Mr', 'Shri' etc.
  - the words 'Mrs', 'Smt', 'Dr' etc. have been fed at the end of name of the person, if applicable.
  - Except for field "SUIT" and some of the fields from DIR1 To DIR 14, as applicable, information is completely filled in and columns are not kept blank.
- (3) In case of 'Nil' data, there is no need to send any floppy and the position can be conveyed through a letter/fax.
- (4) A certificate signed by a sufficiently senior official stating that 'the list of wilful defaulters has been correctly compiled after duly verifying the details thereof and RBI's instructions in this regard have been strictly followed' is sent along with the floppy.

**Annex II****List of Circulars consolidated by the Master Circular**

<i>Sr. No.</i>	<i>Circular No.</i>	<i>Date</i>	<i>Subject</i>	<i>Para No.</i>
1.	DBOD.No.DL(W). BC.12/20.16.002(1)/ 98-99	20.02.1999	Collection and Dissemination of Information on Cases of Wilful Default of Rs. 25 lakh and above	1
2.	DBOD.No.DL.BC. 46/20.16.002/ 98-99	10.05.1999	Disclosure of information regarding defaulting borrowers - Lists of Defaulters/ Suit filed accounts and Data on Wilful Default	Annex
3.	DBOD.No.DL(W).BC 161/20.16.002/ 99-2000	01.04.2000	Collection and Dissemination of information on defaulting borrowers of banks and Financial Institutions	5 and Annex
4.	DBOD.No.DL.BC.54/ 20.16.001/2001-02	22.12.2001	Collection and dissemination of information on defaulters	5
5.	DBOD.No.DL(W). BC110/20.16.003(1)/ 2001-02	30.05.2002	Wilful defaulters and action thereagainst	2, 2.1 to 2.8
6.	DBOD.No. DL.BC.111/ 20.16.001/ 2001-02	04.06.2002	Submission of Credit Information to Credit Information Bureau (CIB)	2.9
7.	DBOD.No.DL(W).BC 58 / 20.16.003/ 2002-03	11.01.2003	Wilful defaulters and Diversion of funds - Action thereagainst	2.1, 2.2

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<i>Sr. No.</i>	<i>Circular No.</i>	<i>Date</i>	<i>Subject</i>	<i>Para No.</i>
8.	DBOD.No.DL.BC. 7 / 20.16.003/2003-04	29.07.2003	Wilful Defaulters and action there- against	3
9.	DBOD.No.DL.BC. 94/ 20.16.003/2003-04	17.06.2004	Annual Policy Statement: 2004-05 - Wilful Defaulters – Clarification on Process	3
10.	DBOD.No.DL.BC.16 / 20.16.003/2004-05	23.07.2004	Checking of wilful defaults and measures against Wilful Defaulters	4

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## ANNEXURE I

### **TIME BASED COMPLIANCE**

<i>Month of Compliance/ due dates</i>	<i>Provisions of the Listing Agreement (Clause No. of the Listing Agreement)</i>	<i>Compliance requirements</i>
(1)	(2)	(3)
January	Shareholders'/Investors' Transfer/ Grievance Committee Meeting to be held by the Company  (8, 41 & 49)	Approval and processing of Transfer, Transmission, Demat and issue of Duplicate Share Certificates etc. to be placed before the Committee
January	Audit Committee Meeting for approving the Results of the Company to be held by the company  (41 & 49)	Approval of results is required for submission of the Results to the Board
January	A statement is required to be prepared by the company indicating the variations between projected utilisation of funds and/ or projected profitability statement made by the Company in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for consideration preferential issue of securities, and the actual utilisation of funds and/ or actual profitability.  (43)	Furnish on a quarterly basis to the Exchange for each of the years for which projects are pro- vided in the prospectus/letter of offer/ object/s stated in the explanatory statement to the notice for consideration pref- erential issue of securities
15th January	Quarterly Compliance Report on Corporate Governance to be prepared by the company and signed by the Compliance Officer or Chief Executive Officer of the Company  (49(VI)(ii))	To be submitted to the Stock Exchange within 15 days from the end of each quarter

1)	(2)	(3)
21st January	The Company is required to file the quarterly shareholding pattern in the revised format indicating the shares pledged or otherwise encumbered (35)	With the Stock Exchange within 21 days from the end of the quarter
23rd January	Notice of Board Meeting for unaudited quarterly results to be sent by the Company (41)	To the Stock Exchange at least 7 days prior to the Board Meeting
23rd January	The Company is required to issue press release in atleast one national news paper and one regional language news paper about the date of the Board or its Sub Committee Meeting for un-audited quarterly results (41)	At least 7 days prior to the Board Meeting
23rd January	Notice of Board Meeting to make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act, 1956, is required to be sent where the company has not yet commenced its commercial production (41)	To the Stock Exchange at least 7 days prior to the Board Meeting
23rd January	The Company is required to issue press release in atleast one national news paper and one regional language news paper about the date of the Board or its Sub Committee Meeting to make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act, 1956. (41)	At least 7 days prior to the Board Meeting
30th January	Board Meeting to be held by the Company where the company has not yet commenced its commercial production, it will make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act, 1956, for the balance of utilization of monies raised by issue and the form in which such utilization funds have been invested by the issuer. (41)	Board Meeting to be held within 1 month. Disclosures to be sent to the Stock Exchange

1)	(2)	(3)
30th January	Board Meeting for the quarterly Results and segment wise revenue, results and capital employed report to be held by the Company	Within 1 month from the end of the quarter
	(41)	
30th January	Intimation of quarterly results by the Company in the revised format alongwith segment wise revenue, results and capital employed	To Stock Exchanges within 15 minutes from the closure of the Board Meeting
	(41)	
1st February	Publication of quarterly results by the Company and statement of deviations in use of issue proceeds in at least one English daily news paper circulating in the whole or substantially the whole of India and in one news paper published in the language of the region, where the registered office of the company is situated.	Within 48 hours of the conclusion of the Board Meeting.
	The Company required to publish the number of investor complaints pending at the beginning of the quarter, received and disposed off during the quarter and lying unresolved at the end of the quarter	Apart from the quarterly results, the statement of investor complaints and the statement of variation of utilization of funds are required to be published by the Company alongwith the quarterly results
	(41 & 43A)	
	The Company is required to publish the statement of variation between projected utilization of funds and/ or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability.	For each of the years for which projects are provided in the prospectus/letter of offer/ object/s stated in the explanatory statement to the notice for considering preferential issue of securities
	(43)	Where there is a material variation, the company is required to furnish an explanation in the advertisement.
February	Shareholders'/Investors' Transfer/ Grievance	Approval and processing of Transfer, Transmission, Demat and issue of Duplicate Share Certificate etc. to be placed before the Committee
	Committee Meeting to be held by the Company	
	(8, 41 & 49)	

1)	(2)	(3)
28th/29th February	Limited Review accompanied by a statement (approved by the Board of Directors) explaining the reasons to the Stock Exchanges, if in respect of any item given in the same proforma format varies by 10% or 10 lakhs is higher from the respective unaudited quarterly results as determined after the "Limited Review" by the Auditors (41)	To be submitted by the Company to the Stock Exchanges.  This is not required if audited quarterly results are submitted within 1 month from the end of the third quarter
March	Shareholders'/Investors' Transfer/Grievance Committee Meeting to be held by the Company (8, 41 & 49)	Approval and processing of Transfer, Transmission, Demat and issue of Duplicate Share Certificate etc. to be placed before the Committee
April	A statement is required to be prepared by the company indicating the variations between projected utilization of funds and/or projected profitability statement made by the Company in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability. (43)	Furnish on a quarterly basis to the Exchange for each of the years for which projections are provided in the prospectus/letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities
15th April	Quarterly Compliance Report on Corporate Governance to be prepared by the company and signed by the Compliance Officer or Chief Executive Officer of the Company (49(VI)(ii))	To be submitted to the Stock Exchange within 15 days from the end of each quarter
21st April	Declaration from the Promoters in respect of their holding as on 31st March under SEBI (SAST) Regulations (40B)	To be given to the Company within 21 days from the end of financial year
21st April	The Company is required to file the quarterly share-holding pattern in the revised format indicating therein, the details of the shares pledged or otherwise encumbered (35)	With the Stock Exchange within 21 days from the end of the quarter

1)	(2)	(3)
23rd April	Notice of Board Meeting for unaudited quarterly results to be sent by the Company  (41)	To the Stock Exchange at least 7 days prior to the Board Meeting
23rd April	The Company is required to issue press release in atleast one national news paper and one regional language news paper about the date of the Board or its Sub Committee Meeting for un-audited quarterly results  (41)	At least 7 days prior to the Board Meeting
23rd April	Notice of Board Meeting to make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act 1956, is required to be sent where the company has not yet commenced its commercial production  (41)	To the Stock Exchange at least 7 days prior to the Board Meeting
23rd April	The Company is required to issue press release in atleast one national news paper and one regional language news paper about the date of the Board or its Sub Committee Meeting to make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act, 1956.  (41)	At least 7 days prior to the Board Meeting
30th April	Board Meeting to be held by the Company where the company has not yet commenced its commercial production, it will make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act 1956, for the balance of utilization of monies raised by issue and the form in which such utilization funds have been invested by the issuer.  (41)	Board Meeting to be held within 1 month. Disclosures to be sent to the Stock Exchange
30th April	Listing Fees to be paid by the Company [38(a)]	Annual Listing fees to be paid to the Stock Exchange computed on the basis of the

1)	(2)	(3)
		capital of the Issuer as on March 31 and worked out as provided in the Listing Agreement
30th April	Board Meeting for the quarterly Results and segment wise revenue, results and capital employed report to be held by the Company  (41)	Within 1 month from the end of the quarter
30th April	Intimation of quarterly results by the Company in the revised format alongwith segment wise revenue, results and capital employed  (41)	To Stock Exchanges within 15 minutes from the closure of the Board Meeting
30th April	Submission of Half yearly Audit from a Practising Company Secretary. This is required to be submitted to the Company by the Registrar & Transfer Agent (RTA)  (47(c))	Within 1 month from the end of half year, to be submitted to the Exchange 24 hours of the receipt of the certificate by the Company
30th April	Intimation by the Company that it will publish audited yearly results within 3 months from the end of the last quarter of the financial year  (41)	In advance to the Stock Exchange
May	Shareholders'/Investors' Transfer/Grievance Committee Meeting to be held by the Company  (8, 41 & 49)	Approval and processing of Transfer, Transmission, Demat and issue of Duplicate Share Certificate etc. to be placed before the Committee
May	Audit Committee Meeting for approving the Results of the Company to be held by the Company  (41 & 49)	Approval of results is required for submission of the Results to the Board
2nd May	Publication of quarterly results by the Company and Statement of deviations of issue proceeds in at least one English daily news paper circulating in the whole or substantially the whole of India and	Within 48 hours of the conclusion of the Board Meeting.  Apart from the quarterly results the statement of investor

1)	(2)	(3)
	<p>in one news paper published in the language of the region, where the registered office of the company is situated.</p> <p>The Company is required to publish the number of investor complaints pending at the beginning of the quarter, received and disposed off during the quarter and lying unresolved at the end of the quarter</p>	<p>complaints and the statement of variation of utilization of funds are required to be published by the Company alongwith the quarterly results</p>
	<p>(41)</p> <p>The Company is required to publish the statement of variation between projected utilization of funds and/ or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability.</p>	<p>For each of the years for which projections are provided in the prospectus/ letter of offer/ object/s stated in the explanatory statement to the notice for considering preferential issue of securities</p> <p>Where there is a material variation, the company is required to furnish an explanation in the advertisement.</p>
3rd or 4th week of May	<p>Board Meeting for approving the Audited Results, Declaration of Dividend, Appointment of Auditors to be held by the Company</p>	<p>— At least 7 days prior intimation to the Stock Exchanges.</p> <p>— Publication of Audited Results for year within 3 months from the end of the year.</p>
30th May	<p>Limited Review accompanied by a statement (approved by the Board of Directors) explaining the reasons to the Stock Exchanges, if in respect of any item given in the same proforma format varied by 10% or 10 lakh whichever is higher from the respective unaudited quarterly results as determined after the "Limited Review" by the Auditors</p>	<p>To be submitted by the Company to the Stock Exchanges.</p> <p>This is not required if audited quarterly results are submitted within 1 month from the end of the third quarter</p>
June	<p>Shareholders'/Investors' Transfer/ Grievance Committee Meeting to be held by the Company</p>	<p>Approval and processing of Transfer, Transmission, Demat and issue of Duplicate Share Certificate etc. to be placed before the Committee</p>

(8, 41 & 49)

1)	(2)	(3)
23rd June	Notice of Board Meeting for audited yearly results to be sent by the Company  (41)	To the Stock Exchange at least 7 days prior to the Board Meeting
23rd June	The Company is required to issue press release in atleast one national news paper and one regional language news paper about the date of the Board or its Sub Committee Meeting for audited yearly results  (41)	At least 7 days prior to the Board Meeting
30th June	Board Meeting to be held for approval of audited yearly results for companies adopting financial year Apr-Mar  (41)	The results to be submitted to Stock Exchange within 15 minutes from the closure of the Board Meeting
30th June	Audited yearly results to be published by the Company in at least one English daily news paper circulating in the whole or substantially the whole of India and in one news paper published in the language of the region, where the registered office of the company is situated.  (40)	To be published within 3 months where the company opts to publish the audited results for the entire year instead of publishing the unaudited results for the last quarter within 30 days from the end of the last quarter
July	A statement is required to be prepared by the company indicating the variations between projected utilization of funds and/ or projected profitability statement made by the Company in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/ or actual profitability.  (43)	Furnish on a quarterly basis to the Exchange for each of the years for which projections are provided in the prospectus/ letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities
July	Declaration from the Promoters in respect of their holding as on record date under SEBI (SAST) Regulations (40B)	To be given to the Company on the record date for the purpose of dividend. (Reg. 8 of SEBI (SAST) Regulations)



1)	(2)	(3)
July	Submission of yearly disclosure to the stock exchanges under SEBI (SAST) Regulations  (40B)	On the record date for the purpose of dividend (Reg. 8 of SEBI (SAST) Regulations)
July	Despatch of Annual Report by the Company  (31)	Six copies to each of the Stock Exchanges where the Company is listed and one copy each to all the recognized stock exchanges in India, as soon as it is issued to the shareholders
July	Certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance to be obtained by the company and submitted  [49(VII)(i)]	As part of the Annual Report and separately alongwith the Annual Report to be submitted to the Stock Exchange
July	Shareholders'/Investors' Transfer/ Grievance Committee Meeting to be held by the Company  (8, 41 & 49)	Approval and processing of Transfer, Transmission, Demat and issue of Duplicate Share Certificate etc. to be placed before the Committee
July	Audit Committee Meeting for approving the Results of the Company to be held by the company  (41 & 49)	Approval of results is required for submission of the Results to the Board
15th July	Quarterly Compliance Report on Corporate Governance to be prepared by the company and signed by the Compliance Officer or Chief Executive Officer of the Company  [49(VI)(ii)]	To be submitted to the Stock Exchange within 15 days from the end of each quarter
21st July	The Company is required to file the quarterly shareholding pattern in the revised format indicating therein the details of shares pledged or otherwise encumbered  (35)	With the Stock Exchange within 21 days from the end of the quarter
23rd July	Notice of Board Meeting for unaudited quarterly results to be sent by the Company  (41)	To the Stock Exchange at least 7 days prior to the Board Meeting

1)	(2)	(3)
23rd July	The Company is required to issue press release in atleast one national news paper and one regional language news paper about the date of the Board or its Sub Committee Meeting for un-audited quarterly results  (41)	At least 7 days prior to the Board Meeting
23rd July	Notice of Board Meeting to make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act, 1956, is required to be sent where the company has not yet commenced its commercial production  (41)	To the Stock Exchange at least 7 days prior to the Board Meeting
23rd July	The Company is required to issue press release in atleast one national news paper and one regional language news paper about the date of the Board or its Sub Committee Meeting to make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act, 1956.  (41)	At least 7 days prior to the Board Meeting
30th July	Board Meeting to be held by the Company where the company has not yet commenced its commercial production, it will make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act, 1956, for the balance of utilization of monies raised by issue and the form in which such utilization funds have been invested by the issuer.  (41)	Board Meeting to be held within 1 month. Disclosures to be sent to the Stock Exchange
30th July	Intimation of quarterly results by the Company in the revised format alongwith segment wise revenue, results and capital employed  (41)	To Stock Exchanges within 15 minutes from the closure of the Board Meeting
1st August	Publication of quarterly results by the Company and statement of	Within 48 hours of the conclusion of the Board

1)	(2)	(3)
	<p>deviations in use of issue proceeds in at least one English daily news paper circulating in the whole or substantially the whole of India and in one news paper published in the language of the region, where the registered office of the company is situated.</p> <p>The Company is required to publish the number of investor complaints pending at the beginning of the quarter, received and disposed off during the quarter and lying unresolved at the end of the quarter</p> <p>(41)</p> <p>The Company is required to publish the statement of variation between projected utilization of funds and/ or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability.</p> <p>(43)</p>	<p>Meeting.</p> <p>Apart from the quarterly results, the statement of investor complaints and the statement of variation of utilization of funds are required to be published by the Company alongwith the quarterly results</p> <p>For each of the years for which projections are provided in the prospectus/ letter of offer/ object/s stated in the explanatory statement to the notice for considering preferential issue of securities</p> <p>Where there is a material variation, the company is required to furnish an explanation in the advertisement.</p>
August	<p>Shareholders'/Investors' Transfer/ Grievance Committee Meeting to be held by the Company</p> <p>(8, 41 &amp; 49)</p>	<p>Approval and processing of Transfer, Transmission, Demat and issue of Duplicate Share Certificate etc. to be placed before the Committee</p>
31st August	<p>Limited Review accompanied by a statement (approved by the Board of Directors) explaining the reasons to the Stock Exchanges, if in respect of any item given in the same proforma format varies by 10% or 10 lakhs whichever is higher from the respective unaudited quarterly results as determined after the "Limited Review" by the Auditors</p> <p>(41)</p>	<p>To be submitted by the Company to the Stock Exchanges.</p> <p>This is not required if audited quarterly results are submitted within 1 month from the end of the third quarter</p>
September	<p>Shareholders'/Investors' Transfer/ Grievance Committee Meeting to</p>	<p>Approval and processing of Transfer, Transmission, Demat</p>

1)	(2)	(3)
	be held by the Company (8, 41 & 49)	and issue of Duplicate Share Certificate etc. to be placed before the Committee
October	Shareholders'/Investors' Transfer/ Grievance Committee Meeting to be held by the Company (8, 41 & 49)	Approval and processing of Transfer, Transmission, Demat and issue of Duplicate Share Certificate etc. to be placed before the Committee
October	A statement is required to be prepared by the company indicating the variations between projected utilization of funds and/ or projected profitability statement made by the Company in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/ or actual profitability. (43)	Furnish on a quarterly basis to the Exchange for each of the years for which projections are provided in the prospectus/ letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities
October	Audit Committee Meeting for approving the Results of the Company to be held by the company (41 & 49)	Approval of results is required for submission of the Results to the Board
15th October	Quarterly Compliance Report on Corporate Governance to be prepared by the company and signed by the Compliance Officer or Chief Executive Officer of the Company [49(VI)(ii)]	To be submitted to the Stock Exchange within 15 days from the end of each quarter
21st October	The Company is required to file the quarterly shareholding pattern in the revised format indicating therein the details of the shares pledged or otherwise encumbered (35)	With the Stock Exchange within 21 days from the end of the quarter
23rd October	Notice of Board Meeting to make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act, 1956, is required to be sent where the company has not yet commenced its commercial production (41)	To the Stock Exchange at least 7 days prior to the Board Meeting

1)	(2)	(3)
23rd October	The Company is required to issue press release in atleast one national news paper and one regional language news paper about the date of the Board or its Sub Committee Meeting to make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act, 1956.	At least 7 days prior to the Board Meeting
	(41)	
23rd October	Notice of Board Meeting for unaudited quarterly results to be sent by the Company	To the Stock Exchange at least 7 days prior to the Board Meeting
	(41)	
23rd October	The Company is required to issue press release in atleast one national news paper and one regional language news paper about the date of the Board or its Sub Committee Meeting for un-audited quarterly results.	At least 7 days prior to the Board Meeting
	(41)	
30th October	Board Meeting to be held by the Company where the company has not yet commenced its commercial production, it will make additional quarterly disclosures as prescribed under Schedule VI of the Companies Act, 1956, for the balance of utilization of monies raised by issue and the form in which such utilization funds have been invested by the issuer.	Board Meeting to be held within 1 month. Disclosures to be sent to the Stock Exchange
	(41)	
30th October	Board Meeting for the Un-audited quarterly Results and segment wise revenue, results and capital employed report to be held by the Company	Within 1 month from the end of the quarter
	(41)	
30th October	Intimation of quarterly results by the Company in the revised format alongwith segment wise revenue, results and capital employed	To Stock Exchanges within 15 minutes from the closure of the Board Meeting
	(41)	

1)	(2)	(3)
30th October	The Company is required to give intimation that it will publish audited half yearly results within 2 months from the close of the half year  (41)	In advance to the Stock Exchange
30th October	Submission of Half yearly Audit from a Practicing Company Secretary. This is required to be submitted to the Company by the Registrar & Transfer Agent (RTA)  (47(c))	Within 1 month from the end of half year, to be submitted to the Exchange 24 hours of the receipt of the certificate by the Company
November	Shareholders'/Investors' Transfer/ Grievance Committee Meeting to be held by the Company  (8, 41 & 49)	Approval and processing of Transfer, Transmission, Demat and issue of Duplicate Share Certificate etc. to be placed before the Committee
1st November	Publication of quarterly results by the Company and statement of deviations in use of issue proceeds in at least one English daily news paper circulating in the whole or substantially the whole of India and in one news paper published in the language of the region, where the registered office of the company is situated.  The Company is required to publish the number of investor complaints pending at the beginning of the quarter, received and disposed off during the quarter and lying unresolved at the end of the quarter  (41)	Within 48 hours of the conclusion of the Board Meeting.  Apart from the quarterly results, the statement of investor complaints and the statement of variation of utilization of funds are required to be published by the Company alongwith the quarterly results
	The Company is required to publish the statement of variation between projected utilization of funds and/ or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability.  (43)	For each of the years for which projects are provided in the prospectus/letter of offer/ object/s stated in the explanatory statement to the notice for considering preferential issue of securities  Where there is a material variation, the company is required to furnish an explanation in the advertisement.

1)	(2)	(3)
23rd November	Notice of Board Meeting for audited half yearly results to be sent by the Company  (41)	To the Stock Exchange at least 7 days prior to the Board Meeting
23rd November	The Company is required to issue press release in atleast one national news paper and one regional language news paper about the date of the Board or its Sub Committee Meeting for audited half yearly results.  (41)	At least 7 days prior to the Board Meeting
30th November	Board Meeting to be held by the Company for approval of audited half yearly results for companies adopting financial year Apr-Mar  (41)	Within 2 months from the end of the quarter  Not required if the company submits unaudited 2nd quarter results
30th November	Intimation of half yearly audited results by the Company  (41)	To Stock Exchanges within 15 minutes from the closure of the Board Meeting
30th November	Limited Review accompanied by a statement (approved by the Board of Directors) explaining the reasons to the Stock Exchanges, if in respect of any item given in the same proforma format varies by 10% or 10 lakhs whichever is higher from the respective unaudited quarterly results as determined after the "Limited Review" by the Auditors  (41)	To be submitted by the Company to the Stock Exchanges.  This is not required if audited quarterly results are submitted within 1 month from the end of the third quarter
December	Shareholders'/Investors' Transfer/Grievance Committee Meeting to be held by the Company  (8, 41 & 49)	Approval and processing of Transfer, Transmission, Demat and issue of Duplicate Share Certificate etc. to be placed before the Committee
2nd December	Publication of audited half yearly results by the Company in at least one English daily news paper circulating in the whole or substantially the whole of India and in one news paper published in the language of the region, where the	Within 48 hours of the conclusion of the Board Meeting.  Apart from the audited half yearly results the statement of investor complaints and the

1)	(2)	(3)
	<p>registered office of the company is situated.</p> <p>The Company is required to publish the number of investor complaints pending at the beginning of the quarter, received and disposed off during the quarter and lying unresolved at the end of the quarter</p>	<p>statement of variation of utilization of funds are required to be published by the Company alongwith the half yearly audited results</p>
(41)	<p>The Company is required to publish the statement of variation between projected utilization of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability.</p>	<p>For each of the years for which projections are provided in the prospectus/ letter of offer/ object/s stated in the explanatory statement to the notice for considering preferential issue of securities</p> <p>Where there is a material variation, the company is required to furnish an explanation in the advertisement.</p>
(43)		



## EVENT BASED COMPLIANCES

<i>Clause No. of the Listing Agreement</i>	<i>Provisions of the Listing Agreement</i>	<i>Compliance requirements</i>
(1)	(2)	(3)
13	In case of any attachment or prohibitory orders restraining the Company from transferring securities out of the names of the registered holders, the Company is required to furnish to the Exchange particulars of the number of securities so affected, the distinctive numbers of such securities and the names of the registered holders thereof.	Promptly notify the Exchange
16	Where the company closes the transfer books for declaration of dividend or bonus shares or issue of shares for conversion of debentures or of shares arising out of rights attached to debentures	21 days notice or 15 days in case of securities which are required to be compulsorily delivered in dematerialized form by all investors, to the Stock Exchange.  In case of rights issue two days advance notice is to be given.
16	The Company on whose stocks, derivatives are available or whose stocks form part of an index on which derivatives are available, notice of corporate actions like mergers, demergers, splits and bonus shares	Notice period of thirty days to Exchanges
19(a)	The Company is required to give prior intimation of the Board Meeting where Buyback of securities, declaration or recommendation of dividend or issue of convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend is due to be considered  (In case of NSE, prior intimation by the Company of the Board meeting where recommendation or declaration of dividend or a rights issue or convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of the dividend is due to be considered. The company is required to recommend or declare all dividend and/or cash bonuses at least five days before commencement of the closure of	7 days in advance intimation to the Stock Exchange

(1)	(2)	(3)
	its transfer books or the record date fixed for the purpose.)	
19(b)	In case the proposal for declaration of bonus is communicated to the Board of Directors of the company as part of the agenda papers	To give notice simultaneously to the Stock Exchanges (No prior intimation to the Exchange is required about the Board Meeting in case the declaration of Bonus by the Company is not on the agenda of the Board Meeting)
19(c) BSE	The company is required to recommend or declare all dividend and/or cash bonuses	At least 5 days before commencement of the closure of its transfer books or the record date fixed for the purpose.
19(c) NSE	The Issuers are also required to send the information on corporate actions in the format which is given in Schedule IV by e-mail (cmlist@nse.co.in)	Information to be sent to Stock Exchanges. No time limit specified.
19(d) NSE	Proposal for Buyback of securities in any Board Meeting	At least 7 days prior notice to Stock Exchange.
20	The Company will immediately on the date of the Board Meeting held to consider or decide the following: <ul style="list-style-type: none"> <li>(a) all dividends and/or cash bonuses recommended or declared or the decision to pass any dividend or interest payment;</li> <li>(b) the total turnover, gross profit/loss, provision for depreciation, tax provisions and net profits for the year (with comparison with the previous year) and the amounts appropriated from reserves, capital profits, accumulated profits of past years or other special source to provide wholly or partly for the dividend, even if this calls for qualification that such information is provisional or subject to audit.</li> <li>(c) The decision on Buyback of Securities.</li> </ul>	Intimate to the Exchange within 15 minutes of the closure of the Board Meetings by Letter/ fax (or, if the meeting be held outside the City of Mumbai, by fax/telegram)
In case of NSE 20(c) above	The Issuers are also required to send the information on financial results by e-mail in the format which is given in Schedule V	The information is required to be sent by the company to the Stock Exchanges. No time limit specified.

(1)	(2)	(3)
is 20(d) and 20(c)		
21	The Company is required to notify the date on and from which the dividend on shares, interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds will be payable	Notify the Exchange at least 21 days in advance of the date
22	<p>The Company will immediately on the date of the meeting of the Board of Directors held to consider or decide the following:</p> <p>(a) short particulars of any increase of capital whether by issue of bonus shares through capitalization, or by way of right shares to be offered to the shareholders or debenture holders, or in any other way;</p> <p>(b) short particulars of the reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to;</p> <p>(c) short particulars of any other alterations of capital, including calls;</p> <p>(d) any other information necessary to enable the holders of the listed securities of the Company to appraise its position and to avoid the establishment of a false market in such listed securities.</p>	Intimate to the Exchange within 15 minutes of the closure of the Board Meetings by Letter/fax (or, if the meeting be held outside the City of Mumbai, by fax/telegram)
24(f)	The Company is required to file any scheme/petition proposed to be filed before any Court or Tribunal under Sections 391, 394 and 101 of the Companies Act, 1956	To be filed with the stock exchange for approval at least a month before it is presented to the Court or Tribunal.
25	<p>In the event of the Company granting any options to purchase any shares of the Company, the Company will notify the following—</p> <p>(a) of the number of shares covered by</p>	Promptly notify the Exchange

(1)	(2)	(3)
	<p>such options, of the terms thereof and of the time within which they may be exercised;</p> <p>(b) of any subsequent changes or cancellation or exercise of such options.</p>	
26	<p>The Issuer will not select any of its listed securities for redemption otherwise than pro rata or by lot and will furnish any information requested in reference to such redemption.</p>	Promptly furnish the Exchange
27	<p>The Company will notify the following—</p> <p>(a) any action which will result in the redemption, cancellation or retirement in whole or in part of any securities listed on the Exchange;</p> <p>(b) the intention to make a drawing of such securities, intimating at the same time the date of the drawing and the period of the closing of the Transfer Books (or the date of striking of the balance) for the drawing;</p> <p>(c) the amount of security outstanding after any drawing has been made.</p>	Promptly notify the Exchange
28	<p>The Company is required to intimate the Exchange prior to making any change in the form or nature of any of its securities that are listed on the Exchange or in the rights or privileges of the holders thereof</p>	<p>21 days' prior notice to the Exchange of the proposed exchange and making an application for listing of the securities as changed if the Exchange shall so require.</p>
29	<p>The Company is required to notify any proposed change in the general character or nature of its business.</p>	Promptly notify the Exchange
30	<p>The Company will notify the following:</p> <p>(a) any change in the Company's directorate by death, resignation, removal or otherwise;</p> <p>(b) any change of Managing Director, Managing Agents or Securities and Treasures;</p> <p>(c) any change of Auditors appointed</p>	Promptly notify the Exchange

(1)	(2)	(3)
	to audit the books and accounts of the Company	
31	<p>The Company is required to forward—</p> <p>(a) six copies of the Statutory and Directors' Annual Reports, Balance Sheets and Profits &amp; Loss Accounts and of all periodical and special reports as soon as they are issued and one copy each to all the recognized stock exchanges in India;</p> <p>(b) six copies of all notices, resolutions and circulars relating to new issue of capital prior to their dispatch to the shareholders;</p> <p>(c) three copies of all the notices, call letters or any other circulars including notices of meetings convened u/s 391 or Section 394 read with Section 391 of the Companies Act, 1956 together with Annexures thereto, at the same time as they are sent to the shareholders, debenture holders or creditors or any class of them or advertised in the Press;</p> <p>(d) copy of the proceedings at all Annual and Extraordinary General Meetings of the Company;</p> <p>(e) three copies of all notices, circulars, etc., issued or advertised in the press either by the Company, or by any company which the Company proposes to absorb or with which the Company proposes to merge or amalgamate, or under orders of the court or any other statutory authority in connection with any merger, amalgamation, re-construction, reduction of capital, scheme or arrangement, including notices, circulars, etc. issued or advertised in the press in regard to meetings of shareholders or debenture holders or creditors or any class of them and copies of the proceedings at all such meetings.</p>	Forward promptly to the Exchange

(1)	(2)	(3)
32	The Company is required to supply a copy of the complete and full Balance Sheet, Profit and Loss Account and the Directors' Report to each shareholder and upon application to any member of NSE.	No time limit specified
33	The Company is required to forward copies of all notices sent to its shareholders with respect to amendments to its Memorandum and Articles of Association and will file with the Exchange six copies (one of which will be certified) of such amendments.	Forward to the Exchange as soon as they shall have been adopted by the Company in general meeting.
34(g)	When the Company gives notice to its security holders by advertisement, it is required to advertise such notice in at least one leading National daily newspaper.	No time limit specified.
36	The Company will keep the Exchange information of events such as strikes, lock-outs, closure on account of power cuts, etc.	The Exchange to be informed both at the time of occurrence of the event and subsequently after the cessation of the event.
36	The Company to keep the Exchange informed of all the events which will have bearing on the performance/operations of the company as well as price sensitive information	Immediately inform the Exchange
38(b)	The Company is required to pay the depositories Annual Custodial Fee at such rates as specified by SEBI from time to time	
47(a)	The Company is required to appoint a Compliance Officer	Inform as and when there is change in the Compliance Officer
47(e)	The Company is required to appoint Registrar & Transfer Agents (RTA)	Inform if there is any change along with the MOU signed with RTA
47(e)	Copies of Memorandum of Understanding entered into with the RTA setting out their mutual responsibilities	Within 48 hours of entering into the agreement
51	File the following information, statements and reports on the Electronic Data Information Filing and Retrieval (EDIFAR) website maintained by National Information Centre (NIC), on-	File the statements with the Exchange. No time limit specified in the Listing Agreement.

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(1)

(2)

(3)

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line, in such manner and format and within such time as may be specified by SEBI:

1. Full version of annual report including the balance sheet, profit and loss account, director's report and auditor's report; cash flow statements; half yearly financial statements and quarterly financial statements.
  2. Corporate governance report.
  3. Shareholding pattern statement.
  4. Statement of action taken against the company by any regulatory agency.
  5. Such other statement, information or report as may be specified by SEBI from time to time in this regard.
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## **MONTHWISE COMPLIANCE CHECK LIST FOR A LISTED COMPANY**

<i>Month Target Date</i>	<i>Matter</i>	<i>Remarks</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
January	Shareholders'/Investors' Transfer/Grievance Committee Meeting	Approval and process of Transfer, Transmission, Demat, Issue of Duplicate Share Certificate etc.
15th January	Submission of quarterly shareholding pattern	Within 15 days from the end of the quarter
January	Audit Committee Meeting for approving the Results of the Company	For submission of the Results to the Board
3rd or 4th week of January	Board Meeting for the Un-audited quarterly Results.	At least 7 days prior intimation to Stock Exchanges.
January	Intimation of quarterly results to Stock Exchanges	Within 15 minutes from the closure of the Board Meeting
January	Publication of quarterly results in news papers	Within 48 hours of the conclusion of the Board Meeting
January	Submission of Limited Audit Review to Stock Exchanges	Within 2 months from the end of the quarter
January	Submission of Secretarial Audit to Stock Exchanges for the quarter	Within 30 days from the end of the quarter
February	Shareholders'/Investors' Transfer/ Grievance Committee Meeting	Approval and processing of Transfer, Transmission, Demat, Issue of Duplicate Share Certificates etc.
1st March	Disclosure of Interest	Form 24AA to be sent to all Directors for renewal of notice for General disclosure of interest.
1st March	Declaration under Section 274(1)(g) of the Companies Act, 1956	Format to be sent to all Directors for their declaration
March	Shareholders'/Investors' Transfer/ Grievance Committee Meeting	Approval and processing of Transfer, Transmission, Demat, Issue of Duplicate Share Certificates etc.



(1)	(2)	(3)
1st April	Sitting Fee Certificates	Issue certificates to Directors regarding payment of sitting fee.
1st April	Listing Fee	Listing fee to be paid for renewal.
April	Shareholders'/Investors' Transfer / Grievance Committee Meeting	Approval and processing of Transfer, Transmission, Demat, Issue of Duplicate Share Certificates etc.
15th April	Reconciliation	Reconciliation of Int./Dividend/ Redemption/ Conversion of Warrants/Call Money etc.
15th April	Submission of quarterly shareholding pattern	Within 15 days from the end of the quarter
21st April	Declaration from the Promoters in respect of their holding as on 31st March under SEBI Takeover Code	To be given to the Company within 21 days from the end of financial year
30th April	Submission of yearly disclosure to the stock exchanges under SEBI Takeover Code	Within 30 days from the end of the financial year
April	Submission of Half yearly Audit from a Practicing Company Secretary	Within 1 month from the end of half year
April	Submission of Secretarial Audit to Stock Exchanges for the quarter	Within 30 days from the end of the quarter
May	Shareholders'/Investors' Transfer / Grievance Committee Meeting	Approval and processing of Transfer, Transmission, Demat, Issue of Duplicate Share Certificates etc.
May	Audit Committee Meeting for approving the Results of the Company	For submission of the Results to the Board
May	Remuneration Committee Meeting for recommending the remuneration of MD & Whole time Directors	For recommending to the Board
3rd or 4th week of May	Board Meeting for approving the Audited Results, Declaration of Dividend, Appointment of Auditors	— At least 7 days prior intimation to the Stock Exchanges. — Publication of Audited

(1)	(2)	(3)
		Results for year within 3 months from the end of the year.
		— Get consent from auditors to act as Auditors for the year.
May	Cost Auditors	Get consent from Cost Auditors, where applicable to act as Cost Auditor for the year and file application to the Central Government.
June	Shareholders' / Investors' Transfer Grievance Committee Meeting	Approval and processing of Transfer, Transmission, Demat, Issue of Duplicate Share Certificates etc.
June	Printing of Annual Report/Art Work	To decide Printing of Annual Report/Art Work
June	Booking of hall for AGM	Advance Booking of Hall for conducting AGM
July	Publishing in news papers regarding Book Closure Dates	At least 7 days prior to start of Book Closure
July	Declaration from the Promoters in respect of their holding as on record date under SEBI Takeover Code	To be given to the Company within 21 days from the record date for the purpose of dividend.
July	Submission of yearly disclosure to the stock exchanges under SEBI Takeover Code	Within 30 days from the record date for the purpose of dividend
July	Fund Arrangement	Letter to Accounts for arrangement of funds for payment of Dividend.
July	Arrangement for AGM	All work relating to AGM including Chairman's Speech etc. to be arranged.
July	Printing of Balance Sheet/ Annual Report	To coordinate with various Departments.
July	Despatch of Annual Report	Despatch of Annual Report to shareholders/ Stock Exchanges etc.
July	Shareholders' / Investors' Transfer / Grievance Committee Meeting	All transfers received upto the date of meeting is be included

(1)	(2)	(3)
15th July	Submission of quarterly shareholding pattern	Within 15 days from the end of the quarter
July	AGM	To hold Annual General Meeting
July	Audit Committee Meeting for quarterly un-audited results of the Company	For submission of the Results to the Board
3rd or 4th week of July (along-with AGM)	Board Meeting for the Un-audited Results for the Quarter	At least 7 days prior intimation to Stock Exchanges
July	Intimation of quarterly results to Stock Exchanges	Within 15 minutes from the closure of the Board Meeting
July	Publication of quarterly results in news papers	Within 48 hours of the conclusion of the Board Meeting
July	Payment of Commission	Sent letter to Accounts for payment of commission to Directors for the financial year
July	Draft of Dividend Warrant	Approve draft of Dividend Warrant
July	Printing & Despatch (Intt./ Dividend)	Arrange to print warrants/ dispatch
July	Submission of Limited Audit Review to Stock Exchanges	Within 2 months from the end of the quarter
July	Submission of Secretarial Audit to Stock Exchanges for the quarter	Within 30 days from the end of the quarter
August	Shareholders'/Investors' Transfer / Grievance Committee Meeting	All transfers received upto the date of meeting to be included
August	Filing of Balance Sheet, Forms and Resolutions etc. with ROC	Within 30 days from the AGM
Sept.	Annual Return	Filing of Annual Return with concerned ROC (within 60 days of AGM)
Sept.	Shareholders'/Investors' Transfer / Grievance Committee Meeting	Approval and processing of Transfer, Transmission, Demat, Issue of Duplicate Share Certificates etc.
October	Shareholders'/Investors'	Approval and processing of

(1)	(2)	(3)
	Transfer / Grievance Committee Meeting	Transfer, Transmission, Demat, Issue of Duplicate Share Certificates etc.
15th October	Submission of quarterly shareholding pattern	Within 15 days from the end of the quarter
October	Audit Committee Meeting for approving the Results of the Company	For submission of the Results to the Board
3rd or 4th week of October	Board Meeting for the Un-audited quarterly & half yearly Results.	At least 7 days prior intimation to Stock Exchanges
October	Intimation of quarterly results to Stock Exchanges	Within 15 minutes from the closure of the Board Meeting
October	Publication of quarterly & half yearly results in news papers	Within 48 hours of the conclusion of the Board Meeting
October	Submission of Limited Audit Review to Stock Exchanges	Within 2 months from the end of the quarter
30th October	Submission of yearly disclosure to the stock exchanges under SEBI Takeover Code	Within 30 days from the end of the financial year
October	Submission of Secretarial Audit to Stock Exchanges for the quarter	Within 30 days from the end of the quarter
Nov.	Shareholders' / Investors' Transfer / Grievance Committee Meeting	Approval and processing of Transfer, Transmission, Demat, Issue of Duplicate Share Certificates etc.
Nov.	Compliance status of Affiliate companies	To check the legal compliance status of other affiliate companies
Dec.	Shareholders' / Investors' Transfer / Grievance Committee Meeting	Approval and processing of Transfer, Transmission, Demat, Issue of Duplicate Share Certificates etc.
Dec.	Compliance status of Affiliate companies	To check the legal compliance status of other affiliate companies

ANNEXURE J

**A BRIEF NOTE ON COMPLIANCE UNDER  
THE LABOUR LAWS**

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**PAYMENT OF GRATUITY ACT, 1972 (PGA)**

**Checklist**

1. Check whether the Establishment changed its name/address during the financial year under review and intimated the Controlling Authority about change within thirty days from the date of such change.
2. Check whether the Establishment has observed the following while paying the gratuity to the persons who are entitled to it:
  - (a) It has paid gratuity at the rate of fifteen days wages for every completed year of service or part thereof in excess of six months, calculated on the rates of wages last drawn by the employee concerned. Since the employees of the establishment are monthly rated employees, the fifteen days wages were calculated by dividing the monthly rates of wages drawn by him by twenty-six and multiplying the quotient by fifteen.

OR

Since the employees were employed on piece rate basis, the gratuity was paid at the rate of fifteen days wages for every completed year of service calculated at an average total wages during a period of three months immediately preceding the termination of employment.

OR

Since the Registered Establishment is a seasonal establishment, gratuity was paid at the rate of seven days for each season.

- (b) Check whether in the event of death or disablement of any employee due to accident or disease, the gratuity was paid without the requirement of five years of continuous service.
- (c) Check whether in the event of death, the gratuity was paid to nominees or legal heir(s) or where the person entitled was a minor, the gratuity was deposited with the Controlling Authority.
- (d) Check whether the maximum amount of gratuity paid to any employee did not exceed the prescribed limit.

3. Check whether the Establishment made deductions from the gratuity in respect of those employees who were liable for any act, wilful omission or negligence, which caused damages or loss to, or destruction of, property of the Registered Establishment. The total deduction was only to the extent of loss or damages so caused.
4. Check whether the Establishment also made deductions from the gratuity in respect of an employee whose services were terminated for an offence involving moral turpitude.
5. Check whether the Establishment is maintaining its own Group Gratuity Fund which is recognised by the Commissioner of Income Tax and registered under the Societies Registration Act and the employer has been regular in making contribution to the Fund.
6. Check whether the Establishment has received nomination from all the employees who have served it for one year or more and has kept all the nominations so received in the custody of Mr.(s)..... Labour Officer, whose office is located at ..... The nominees of all the employees were relatives of the employees except in those cases where the employees did not have any family.
7. Check whether the Establishment has paid its liability under PGA within thirty days from the date it became payable or the Establishment defaulted in making payment of gratuity within thirty days from the date it became due to the person(s) entitled to it but the liability was discharged subsequently together with the payment of interest at a rate ..... being the interest for the time being payable by the Central Government for long term deposit.
8. Check whether the Establishment has deposited with the Controlling Authority the liability under PGA to the extent admitted by it, which was disputed by the person entitled to it. The Establishment has, accordingly, made application to the Controlling Authority for the settlement of dispute.
9. Check whether
  - (a) The Establishment sent Notice to the person entitled to gratuity under the PGA within fifteen days from the date of receipt of application for gratuity from such person with the directions to collect the gratuity within thirty days from the date of receipt of application.
  - (b) Where the Establishment did not admit its liability under the PGA, it has specified the reasons for the same.
  - (c) Copies of Notices under clause (a) and (b) were also endorsed to the Controlling Authority.
10. Check whether the liability of gratuity was settled in cash or at the request of the person claiming by Demand Draft or Banker's Cheque.

Where the amount of gratuity was less than Rs. 1,000/-, the same was sent by Postal Money Order. The Controlling Authority was given details of all payments made.

11. Check whether the Establishment has maintained the Registers, filed the Forms and submitted Returns as specified in *Annexure-I* to this Certificate.
12. Check whether all unpaid/unclaimed gratuity for three years from the date it became due was transferred to Labour Welfare Fund constituted under the Bombay Labour Welfare Fund Act, 1953.\*

\* *The members should mention the name of the Labour Welfare Fund Act applicable in their respective States.*

*Annexure-I*

**Registers as maintained by the Establishment under the PGA**

1. Register of Nominations received from employees.
2. Register of Gratuity paid under the PGA.

**Forms as filed by the Establishment under the PGA.**

- 1.
- 2.
- 3.

**Returns as submitted by the Establishment under the PGA.**

- 1.
- 2.
- 3.

Place :

Date :

*Company Secretary in Practice  
C.P. No.*

**EMPLOYEES PROVIDENT FUND & MISCELLANEOUS PROVISIONS ACT, 1952****Checklist**

1. Check whether the Factory/ Establishment is covered by the provisions of this Act with effect from .....

*Or*

Check whether the Factory / Establishment is covered under the provisions of this Act by a notification dated ..... given by the government in the official gazette.

2. Check whether the Factory / Establishment has duly submitted all returns to the Commissioner / Regional Commissioner as stated in the Annexure II to this certificate as per the provisions of the Act, regulations and rules made in this behalf.
3. Check whether the Factory / Establishment has duly maintained the Registers specified in the Annexure II as per the provisions of the Act, regulations and rules made in this behalf.
4. Check whether the Establishment has duly paid its contribution to Employees Provident Fund, Employees Family Pension Scheme, Employees Deposit Linked Insurance Scheme set up under the Act during the financial year.
5. Check whether the Establishment has set up a separate Provident Fund Trust and has complied with the provisions of the Act during the financial year.
6. Check whether the Establishment has sent a consolidated return within fifteen days of the commencement of the Employees Provident Fund Scheme to the Commissioner during the financial year.

*Or*

Check whether the Establishment has no employees entitled to become members of the Employees Provident Fund during the financial year. Therefore, the establishment has duly filed the 'NIL' return to the Commissioner.

7. Check whether during the year under review, the Establishment has duly filed returns with the Commissioner in respect of employees qualifying to become members of the Employees Provident Fund and employees leaving the service during the financial year.
8. Check whether the Establishment has sent a consolidated return within three months of the commencement of the Employees Pension Scheme to the Commissioner.

*Or*

Check whether the Establishment has no employees entitled to become members of the Employees Family Pension Fund during the financial year. Therefore the establishment has duly filed the 'NIL' return to the Commissioner.



9. Check whether during the year under review, the Establishment has duly filed returns with the Commissioner in respect of employees qualifying to become members of the Employees Provident Fund and employees leaving the service during the financial year.
10. Check whether the Establishment has duly submitted returns to the Regional Commissioner about the particulars of all its branches, departments, owners, occupiers, directors, partners, manager or any other person or persons who have the ultimate control over the affairs during the financial year.

*Or*

Check whether the Establishment has duly sent intimation to the Regional Commissioner of any change in such particulars, of all its branches, departments, owners, occupiers, directors, partners, manager or any other person or persons who have the ultimate control over the affairs during the financial year.

11. Check whether the Establishment has duly forwarded to the Commissioner the consolidated statements showing the recoveries made from the wages of each employee and the amount contributed by the employer in respect to each such employee during the financial year.

*Or*

Check whether there are no recoveries made from the wages of each employee during the financial year and the Establishment has also submitted the "Nil" return to the Commissioner.

12. Check whether the Establishment has also duly sent to the Commissioner, the consolidated annual contribution statement showing the total amount of recoveries made during the year from the wages of each member and the total amount contributed by the employer in respect of each such member during the financial year.
13. Check whether there was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act

*Annexure-II*

**Registers as maintained by the Establishment under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952**

1. Contribution cards.
2. Monthly return on new members
3. Inspection report note book
4. Consolidated annual statement of accounts of each employee concerned filed with the Commissioner.
5. Monthly consolidated statement to RPF Commissioner on contributions and recoveries.

**Forms as filed by the Establishment under the EPF Act.**

- 1.
- 2.
- 3.

**Returns as submitted by the Establishment under the EPF Act.**

- 1.
- 2.
- 3.

Place :

Date :

*Company Secretary in Practice*

*C.P. No.*

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## ANNEXURE K

### **A BRIEF NOTE ON COMPLIANCES UNDER ENVIRONMENTAL LAWS**

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#### **THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974; THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981; THE ENVIRONMENT PROTECTION ACT, 1986; AND THE ENVIRONMENT (PROTECTION) RULES, 1986**

The Water (Prevention and Control of Pollution) Act, 1974 (The Water Act), The Air (Prevention and Control of Pollution) Act, 1981 (the Air Act), The Environmental Protection Act, 1986 (the EP Act), and The Environmental (Protection) Rules, 1986 fall under the same class. There are various other legislations, which could be properly said to be falling under the same class of legislations.

In all these legislations, protection of public interest is the single objective. Unlike legislations relating to securities and intermediaries that primarily operate for protection of the interests of the investors, the Water Act, Air Act and EP Act aim at protecting the interests of the general public.

As per the scheme of the Water Act and Air Act, there is a need to obtain from the State Pollution Control Board (State Board) consent to establish and operate.

Section 24 of the Water Act prohibits use of stream or well for disposal of polluting matter and Section 25 requires prior consent of the State Board to establish or to take any steps to establish any industry, operation, or process or any treatment and disposal system or any extension or addition thereto which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land. Section 25 of the Water Act also restricts bringing into use any new or altered outlet for the discharge of sewage or to begin any new discharge of sewage unless prior consent of the State Board is obtained. Section 33A of the Water Act empowers the authorities to issue necessary directions which includes the powers to direct a closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service.

Section 21 of the Air Act provides that no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area. Section 22 of the Air Act prohibits discharge of any emission of any air pollutant in excess of the standards laid down by the State

Board under Section 17 of the Air Act. Under Section 31A of the Air Act, powers similar to those under Section 33A of the Water Act exist and they include the powers to direct a closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service.

Section 7 of the EP Act provides that no person carrying on industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

Rule 5 of the Environment (Protection) Rules, 1986 empowers the Central Government to take into consideration various factors such as quality of environment, topographic and climatic features of any area, biological diversity, net adverse environmental impact and proximity to human settlements for the purpose of prohibiting or restricting the location of industries and carrying on of processes and operations in different areas.

Rule 13 of the Environment (Protection) Rules, 1986 empowers the Central Government to prohibit or restrict the handling of hazardous substances in different areas.

All units generating hazardous wastes are required to obtain necessary authorisation under the Hazardous Waste (Management & Handling) Rules, 1989. Further, all organisations engaged in the manufacture, storage and import of Hazardous Chemicals are required to obtain necessary authorisation under Manufacture, Storage & Import of Hazardous Chemical Rules, 1989.

The Notification dated 27/01/1994 [1994] XXIV CS 339 (GN-38), lists down the industries that require clearance from the Ministry of Environment and Forests. There are also other clearance requirements, recent among them being the restrictions introduced in respect of constructions close to coastal belt of the country.

For illustration vide notification issued on 10/04/1997 [1997] XXVII CS 705 (GN-144), the Ministry of Environment and Forests, specified the category of Thermal Power plants requiring environmental clearance from the State Government. The said notification contains in Schedule I, the categories of Thermal Power plants requiring clearance from State Governments. Schedule II of the notification gives the detailed procedure thereof including the prescribed application form. Schedule III contains norms for the composition of expert committee for environmental impact assessment and Schedule IV contains the procedure for public hearing.

Depending on the type of industries, manufacturing units are categorised into 3 (three) categories, viz., Orange, Green, Red (ordinary red and special red) and applicable rules have accordingly been framed.

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## ANNEXURE L

# **A SYNOPSIS OF THE COMPLIANCES UNDER THE COMPANIES ACT, 1956**

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### **Introduction**

The purpose of a company, formed as a commercial enterprise, is mainly to make profits by carrying on its business and maximize its wealth. While doing so, a company is directed by the Board of Directors, which is assisted by officers and professionals. In its pursuit for achieving its objectives and making profits the most important for requirement of a company is to adhere to the legislative environment in relation to such objectives and pursuits and strive, at all times, to deliver whatever has been promised, whether it is to shareholders or stakeholders or customers or vendors or service providers or suppliers or regulators, whether such promises are made in any contract or agreement, or demanded by a provision of law, or merely due to moral covenants only. In other words the company is expected to aim always to deliver whatever has been promised to different sections of the society including its stakeholders and regulators. A company would have failed in its commitment to be a responsible corporate citizen, if it doesn't comply with the provisions of law. This proposition is based on the premise that every provision of law the statute book is only in the interests of the public.

### **General Compliance Requirements**

1. Whether the company has kept and maintained all the statutory registers, filed all forms, returns and notices to the prescribed authorities as per the provisions of the Companies Act, 1956 and mention the name of each register, return, form or notice together with date of filing of the return, form or notice ?”
2. “Whether the company has followed all the requirements of the Act and the Articles of Association in respect of notices, proxies, quorum and minutes of all general meetings (including annual general meeting and requisitioned extra-ordinary general meeting) and board and committee meetings and mention the date and type of each meeting?”

At present a company with a paid-up capital of Rs.10 Lakhs or more, but not more than Rs.2 Crores is required to obtain a Secretarial Compliance Certificate, from the practising Company Secretary. This certificate covers 33 points and can be considered to be a reasonably comprehensive one. However, it does not apply to big companies, if paid-up capital were to be considered as

the yardstick for measuring the size of a company. In order to make it comprehensive and useful to both the corporate sector and regulators, it is necessary to introduce the statutory need for a comprehensive audit encompassing not only the provisions of the Act but also other important legislations.

A perusal of the scheme of the Act makes it clear that compliances under this Act happen on two counts. Compliances of the first type are non-event based and they are the filing of the annual return, annual report including the secretarial compliance certificate wherever applicable. The compliances of the second category are those, which are necessary on the happening of certain events. These events require compliance-of-various provisions of the Act and in certain cases provisions of other legislations also.

To illustrate an issue of securities or buy back of securities would require not only the compliance of the Act but also the provisions of the applicable Guidelines/Regulations of Securities and Exchange Board of India (SEBI). For all these event based compliances, it is possible to, (in certain cases it is already there), make it necessary for a certification by a Company Secretary in practice or a Company Secretary in employment stating that the company has complied with all the provisions of the Act and other applicable legislations in so far as they apply to the event in question.

The existing certification requirements are not comprehensive. The Laws that apply in respect of the transaction in question are administered by different Departments and no comprehensive certification takes place covering all the regulations / laws. To illustrate, if one takes the issue of securities under the Employee Stock Option Scheme by a listed company, one would find that there are the provisions of the Companies Act, the Listing Agreement, the Foreign Exchange Management Act and the Regulations thereunder, SEBI Guidelines and Regulations, the Stamp Act and the Income Tax Act.

An analysis of the Companies Act brings out the following:

- The Act has 658 sections, though there are many sections which have become inapplicable or which have been omitted altogether.
- The Act has been divided into XIII parts. For the time being, Part VIA brought into the Act by the Companies (Second Amendment) Act, 2002 has not yet come into force.
- Part I and Part IA to Part IC of the Act relate to certain preliminary matters including provisions for the establishment and empowerment of National Company Law Tribunal and Appellate Tribunal. For the time being, it is necessary to note that the provisions of the Act with regard to administration of justice through Company Law Board in certain matters continue and the National Company Law Tribunal has not yet been constituted.

### **Analysis of Part II of the Companies Act**

Part II of the Act contains provisions relating to incorporation of a company, its memorandum and articles of association. Part II also deals with membership,

contracts, deeds, investments, seal, service of documents and authentication of proceedings.

### **Alteration of Memorandum of Association**

The three subjects viz., the name change, alteration of objects clause and shifting of registered office from one state to another are covered under it. Of all the sections that pertain to alteration of memorandum, the most important seems to be Section 16, where it is clearly provided that alteration of conditions of memorandum shall not be carried out except in the cases, in the manner and to the extent specifically provided in the Act. As per Section 16 of the Act it will be very interesting to see that the name clause, situation clause, objects clause, liability clause, capital clause are the main clauses that could be deemed to be conditions contained in a memorandum of association. The basic point should be what is stated in Section 16 of the Act. Section 16 of the Act provides that the conditions contained in the memorandum of association are those conditions that are governed by Section 13 of the Act. And such conditions have to be altered only in the manner and to the extent expressly provided in the Act.

However, where the share capital of the company has to be altered for earmarking a portion of the capital for issue of preference shares without any increase in capital, it could be seen that no specific provision touching upon this issue is contained in the Act. But share capital is a condition contained in Section 13 of the Act and therefore, it should be scrupulously ensured that the alteration of any condition contained in the memorandum should be done only to the extent and in the manner expressly provided in the Act.

Therefore all the questions relating to alteration of conditions contained in the memorandum could be clubbed into one question whether the company has complied with Section 16 of the Act. This would cover alterations of not only the conditions contained in a memorandum falling under sub-sections (1) and (2) but also other provisions contained in the memorandum falling under sub-sections (3) and (4) of Section 16 of the Act.

The reclassification of share capital could be considered as a matter falling under sub-section (3) and (4) of Section 16 of the Act, particularly in view of the following facts:

- That the term “shares” include both preference and equity shares.
- That the company can issue preference shares if so authorised by articles of association;
- That Section 13, in sub-section (4) requires the mentioning of only the amount of share capital and the division thereof into shares of fixed amount.
- It does not state the kind of share composition and the nature of share capital.
- Thus classification of shares into its kinds cannot constitute a condition governing the memorandum.

Let us consider the position with regard to the alteration of the liability clause. Under Section 13 of the Act the liability clause is one of the conditions specified in the memorandum. A company with unlimited liability may like to alter its liability clause. In such a situation, Section 32 of the Act will come into play. As per Section 32 of the Act, a company registered as unlimited may re-register under this Section as a limited company and a company already registered as a limited company may re-register under this Act. Obviously, the section does not provide for registration of a limited company into an unlimited company. Altering the liability clause of the memorandum for converting the limited liability into unlimited liability would be appear to be void as there is no express provision provided in the Act. However for alteration of the liability clause from limited liability to unlimited liability, it is necessary to keep in mind that under Section 38 of the Act, it has been clearly provided that if the alteration in any way increases the liability of a member, it shall not be binding upon the members unless the member agrees in writing before or after the particular alteration is made. Thus, a reading of Section 38 of the Act would make it clear that increasing the liability of members is not, per se, void. Only thing it requires the consent of all the members in writing. This also makes it clear that such an alteration cannot be considered an alteration falling under sub-section (3) and (4) of Section 16 of the Act. Thus practically, all the members of the company have to agree in writing for undertaking unlimited liability. It is in this context, one has to look at Section 32(1)(b) of the Act and understand that if a company with limited liability were to apply for re-registration, with unlimited liability, the Registrar cannot do so unless he is convinced that all the members have agreed in writing for undertaking unlimited liability.

Thus the question whether the company has complied with Section 16 of the Act assumes greater significance and this will be a crucial question in Part II of the Act. This question will also include within its ambit the position that may arise out of any failure to register an alteration to the situation clause. As per Section 19 of the Act, an alteration referred to in Section 17 should be registered within 3 months from the date of the order of the Company Law Board. If the alteration is not so registered, all proceedings connected therewith including the order will become void and inoperative on the expiry of the period of 3 months or the extended period.

### **Section 25 of the Act**

The provisions contained in Section 25 of the Act are intended to serve a laudable objective. In order to enable companies formed under Section 25 to carry on their objectives without much hassles, the Companies Act has thought it fit to relieve such companies from various provisions of the Act. Section 25 companies enjoy a lot of exemptions and they also enjoy concession in payment of filing fees and registration fees. Under the Income Tax Act, these companies are also eligible to enjoy exemption from Income Tax liability.

### **Alteration of Articles of Association (Section 31)**

Though there is a requirement for registration of the Alteration of Articles of Association. Where a public company chooses to alter its Articles of Association



to change its status to that of a private company, such alteration would require not only the approval of the Central Government (delegated to Registrar of Companies) but also the filing of a copy of the altered Articles of Association within one month from the date of receipt of order of approval.

In the case of a Listed company, such an alteration would also require the passing of the special resolution by postal ballot as per the Companies (Passing of Resolution by Postal Ballot) Rules, 2001. Section 192 of the Act deals with registration of resolutions and as per the said section all special resolutions have to be filed at the office of the Registrar of Companies and the title of the said section is "Registration of Certain Resolutions and Agreements".

### **Copy of Memorandum and Articles to be given to the Members (Section 39)**

Section 39 of the Act confers upon every member a statutory right to obtain from the company an upto date copy each of following documents:

- The memorandum,
- The articles,
- Every agreement, and
- Every resolution

This being an important right, and Section 39 of the Act contains a specific provision clause in this regard. This section confers a statutory right and it should be attended to with utmost respect. In the era of Corporate Governance, the Company Secretary and the directors of a company are under an obligation to be answerable not only to the members but also to the stakeholders.

### **Noting of Alteration to Memorandum or Article in every copy (Section 40)**

The provisions contained in Section 40 of the Act are very important and companies generally do not keep their memorandum and articles duly updated. It becomes the first duty of every person dealing with the company, auditing / inspecting the records of the company to go through the memorandum and articles without fail. As per Section 40 where an alteration is made in a memorandum or articles or any resolution referred to in Section 192 of the Act is passed, every copy of the memorandum or articles or agreement or resolution shall be in accordance with the alteration. This section also provides a specific penalty for non-compliances of this section. As per the doctrine of constructive notice, a third party is deemed to have notice of the contents of memorandum and articles. If the memorandum and articles does not reflect the alteration made, then it defeats the very purpose of Section 40 of the Act.

### **Consequences of Default in Complying with Conditions Constituting a Private Company (Section 43)**

Section 43 is also a very important section. A company in order to be a private company should necessarily include the provisions of clause (iii) of sub-

section (1) of Section (3) of the Act in its articles of association. If a private company defaults in complying with any such provision, it shall cease to be entitled to the privileges and exemptions conferred on private companies and this Act shall apply as if it were not a private company.

#### **Conversion into Public Company (Section 44)**

This is another case where there is a certification by the Registrar of Companies that follows such conversion. But the certification is not issued by the Registrar by virtue of any requirement under Section 44 of the Act. It is to be noted that the Registrar issues the certificate, a fresh certificate of incorporation, consequent upon the deletion of the word "private" from the name of the company. Moreover the effect of a resolution under Section 44 of the Act deleting the specific conditions constituting a company, a private company, is immediate and the change in status happens no sooner than the resolution is passed. Hence the company forthwith on the passing of the resolution becomes a public company. Filing of the said resolution under Section 192 of the Act or the filing of the statement of lieu of prospectus under Section 44 of the Act or the registration of the change of name arising out of the need for deleting the word "private" from the name of the company are all matters that may happen subsequent to the change in status. They have to be distinguished from the certificate issued by the Registrar under section 18 of the Act whether for alteration of objects or for shifting of registered office. Further, the moment a private company becomes a public company under this section, it has to comply with various other requirements contained in the Act with regard to a public company.

#### **Reduction of Number of Members (Section 45)**

Where the number of members falls below the statutory minimum, whether the company is a private company or public company, the members become severally liable as per Section 45 of the Act.

#### **Investments of Company to be held in its own name (Section 49)**

Under certain circumstances a company is entitled to hold investments which may not be registered in its own name. Subsections (2), (3), (4) and (5) of Section 49 of the Act describe such situations. It is to be noted that these situations are exceptional in nature and they have to be scrupulously followed with the framework of Section 49 of the Act. And where a company has investments which are not held by it in its own name, sub-section 7 of Section 49 of the Act requires a company to maintain a register of investments which is open for inspection as provided in sub-section (8) of Section 49 of the Act. Any default is liable to be punished in accordance with sub-section (9) of Section 49 of the Act.

#### **Analysis of Part III of the Companies Act**

Part III of the Act contains Sections 55 to 81 and this part deals extensively with issue and allotment of securities.

It is essential to distinguish between issue of securities by a listed company

whether the proposed issue is to the public or not, from issue of securities by any other company. Where the securities are proposed to be issued to public, the unlisted company would be regarded as a company that purports to issue shares to the public. In both the cases, while there are very important provisions under the Companies Act, pursuant to the enactment to the SEBI Act and constitution of SEBI, and further pursuant to introduction of Section 55A in the Act by the Companies (Amendment) Act, 2000, all these matters have seen a necessary shift in focus from the provisions of Companies Act to the Guidelines of SEBI. This aspect must be borne in mind while considering the compliances with regard to issue of securities.

It should be borne in mind, for a listed company, every issue has to be in accordance with the SEBI Guidelines and the Listing Agreement also. Whereas these Guidelines will apply to an unlisted company only when there is an issue to public. Any issue of shares or debentures to 50 or more persons would be deemed to be an issue to public pursuant to Section 67 of the Act. In the case of listed companies compliance programme needs to cover anything falling under SEBI Guidelines or Listing Agreement.

#### **Acceptance of Public Deposits and Provisions relating to Small Depositors (Section 58A and Section 58AA)**

In complying the provisions of Section 58A and 58AA of the Act and also the Companies (Acceptance of Deposits) Rules, 1975, under Companies (Auditors' Report) Order 2003, the statutory auditor of the company has to report in the case of a company which has accepted deposits from public whether the provisions of Section 58A, 58AA of the Act and the relevant rules have been complied with.

Under CARO, 2003, the auditor is supposed to state positively whether the public company (the scope is restricted to public deposits) has complied the provisions of Section 58A and 58AA of the Act and give his opinion whether the company has violated those provisions. The auditor should also state whether the company has complied with orders of Company Law Board, if any under Section 58AA of the Act. The most important aspect of Section 58A or Section 58AA of the Act is whether the deposit has been repaid on time with interest due thereon as per the terms of acceptance. In this regard, the Company Law Board in one of its decisions observed and held that unsecured loans that do not have the features of public deposits are not deposits at all.

In determining the extent of compliance of the provisions of the Act under Section 58A, 58AA and 58B following are important :

- Under Section 58AA of the Act, sub-section (7) provides that if a company had accepted deposits from small depositors and subsequent to such acceptance obtains working capital loans, it should first use the funds for repayment of such deposits.
- Under Section 372A of the Act, if the company had defaulted in complying with Section 58A, the company cannot invest or lend or provide guarantee or security as long as the deposit is subsisting.

- As per Section 77B of the Act, the company is prohibited from buying back, if any default committed by the company in repayment of deposit or interest payable thereon.
- There are also other provisions that protect the interests of depositors.
- Under Section 274 (1) (g) of the Act, if the default continues for one year or more, the directors of the company incur the inevitable disqualification.
- Under Section 58AAA, the default in repayment of deposits has been made a cognizable offence.

In the case of Non-Banking Financial Companies, they have to comply with the directions of the Reserve Bank of India also.

#### **Private Placement (Section 67)**

Section 67 of the Act contained a very clear expression of what amounts to an issue of shares to public as distinguished from a private placement. Section 67 makes it clear that the offer or invitation to subscribe for shares / debentures shall be treated as an offer to the public, if the offer or invitation is made to 50 persons or more. Virtually, neither there should be an offer nor any invitation to subscribe for shares / debentures to 50 persons or more otherwise than by way of a public issue.

This is interesting and it is possible in unlisted public companies. In listed companies a resolution under Section 81(1A) is usually passed and the Disclosure and Investor Protection Guidelines are followed as per Chapter XIII. Even in such cases, it is quite possible that Section 67 of the Act is violated. A violation of Section 67 of the Act is a major violation and it creates a major offence. It cannot be said that Section 629A of the Act will apply and the offence is treated as though it is an offence for which specific penalty is provided elsewhere in the Act. A violation of Section 67 of the Act should be construed in the proper perspective and it should be said that all the provisions of Act and the SEBI Guidelines that apply to issue of shares or as the case may be, debentures to public have been violated.

The question involved is a question of fact and for the purpose of attracting Section 67 of the Act, it is not necessary that there should be an allotment of shares / debentures though the filing of a Form No.2 evidencing allotment on a particular date to 50 persons or more will prove to be a clinching evidence of the contravention of Section 67 of the Act. In spite of the amendment brought about by the Amendment Act 2000, questions like whether issue of shares to 50 persons or more in different tranches not happening in a single lot or originating at a particular point of time would attract Section 67 of the Act, often come up. The underlying principle that there should not be an offer or invitation to 50 persons or more 'is the guiding principle and whenever there is an offer or invitation to 50 persons or more otherwise than by way of a public issue, in accordance with the Act and the Guidelines, there will be a violation of Section 67 of the Act.

**Minimum Subscription (Section 69)**

The law is clear that there should be a minimum subscription and this applies for rights issues also under the SEBI (Disclosure and Protection) Guidelines, 2000. All these are very important requirements and have been in place for protecting the investors. Only in respect of debt instruments privately placed by listed companies, there is a relaxation from this requirement. Where the minimum subscription has not been received, Section 69 demands returning of the moneys to the investors.

**Statement in lieu of Prospectus (Section 70)**

Section 70 of the Act contains an important provision. Whenever a company wants to issue shares, without issuing a prospectus, it is mandatory to deliver to the Registrar a statement in lieu of prospectus at least 3 days before allotment of shares / debentures.

**Listing Permission (Section 73)**

As per the listing agreement and Paragraph 2.1.4 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 and in view of the subsequent circular issued by SEBI, companies issuing securities to public have to necessarily get 'in principle' permission for listing the securities. However, the effect of Section 73 of the Act is very serious in that it makes the allotment totally void. Hence it is necessary to take care of that while complying Section 73.

**Buyback of Securities (Section 77A, 77AA, 77B)**

The requirements to be complied with by listed companies under the above sections read with relevant regulations of SEBI which covers all matters that apply to listed companies / companies purporting to be listed.

Even in respect of unlisted companies, it is necessary to note that under Section 77A read with Section 77AA and Section 77B, there are certain specific compliance requirements, restrictions and prohibitions. Besides these substantive provisions of law contained in the above sections, the company that intends to make a buyback should comply with the Private Limited Company and Unlisted Public Limited Company (Buyback of Securities) Rules, 1999. In order to appreciate the depth of the subject, it becomes necessary to go through the important requirements, restrictions and prohibitions.

Under Section 77A, the following are the major requirements.

- The buyback should be from out of specified sources of funds such as the free reserves, the securities premium account or the proceeds of issue of shares or other specified securities.
- The buyback requires an enabling clause in the articles of association.
- The buyback requires a specific board resolution or a special resolution with an explanatory statement containing specified particulars. The buyback should be equal to or less than 25% of the total paid-up capital of the company and its free reserves.

- There should be a specified debt equity ratio.
- The shares or other securities, which are proposed to be bought back, have to be fully paid up.
- The buyback must be in any one of the modes prescribed under the said rules.
- The company should file with the Registrar of Companies, the draft letter of offer containing the particulars specified in the said rules before the buyback.
- The Company should file the declaration of solvency with the Registrar of Companies.
- The company should follow the prescribed procedure for making the offer and the payments.
- The company should obtain a certificate from a Company Secretary in Whole time Practice with regard to compliance of the entire rules.
- The company should also maintain a record of the destroyed share certificates.
- The company should extinguish the certificates or other securities bought back.
- As per the rules, the company should obtain a certificate from a Company Secretary in Whole time Practice with regard to extinguishment and physical share certificates.
- The company is required to maintain a register containing the prescribed particulars.
- The company should file a return in the prescribed form with the Registrar of Companies.
- The company is prohibited from making any further issue of the same kind of shares or other securities for a period of 6 months.
- As per Section 77AA of the Act, it is necessary to create Capital Redemption Reserve Account for a sum equal to the nominal value of the shares purchased.
- As per Section 77B of the Act, a company is prohibited from buying back its own shares or other specified securities if it has not complied with Section 159, 207 and 211 of the Act.
- As per Section 77B of the Act, the company is prohibited from buying back through any subsidiary or any investment company or group of investment companies.
- As per Section 77B of the Act, the company is prohibited from buying back, if any default committed by the company in repayment of deposit or interest payable thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institution or bank, is subsisting.

It is necessary to look at the important prohibitions contained in Section 77B of the Act. There should not be a buy back through any back door arrangement. This calls for a detailed look at the people who agree to the offer made by the company for buyback. There should not have been certain subsisting defaults when the proposal for buyback is under consideration. There should not be a default in compliance of Sections 159, 207 and 211 of the Act. A perusal of Section 207 would reveal that it is basically a section levying a fine or penalty upon companies that have defaulted in payment of declared dividend except in certain exceptional circumstances. Sub-section (2) of Section 77B should be understood to mean whether the company has defaulted to comply with any order of any court awarding punishment as per Section 207 of the Act.

Section 211 of the Act would pose very complicated questions and finding an answer whether the company had defaulted the provisions of Section 211 of the Act would require close monitoring. Most of the requirements such as the following pertain to accounts and financial statements of the company:

- Whether the financial statements show a true and fair view ?
- Whether the company has complied with the accounting standards ?
- Whether the company has drawn up its financial statements in accordance with Schedule VI of the Act ?

While complying one has to ascertain whether the private / unlisted public company has complied with the provisions of the Sections 77A, 77AA and 77B of the Act and the Rules thereunder with regard to buyback of shares and other specified securities ?" Therefore, one has to ensure that —

- (a) the company has ensured buyback within the ceiling in relation to percentage of paid up capital and free reserves ?
- (b) the company has followed the prescribed offer procedure and has paid all the persons for the bought back shares or other specified securities ?
- (c) the company has filed with the Registrar of Companies the letter offer declaration of solvency, certificate from a company secretary in practice of compliance of the Rules including extinguishment and destroying of certificates of shares or other specified securities bought back, the return of buyback ?
- (d) the company has maintained the register of buyback and Register of securities destroyed / cancelled ?
- (e) the company has complied with the provisions of Section 77AA of the Act with regard to creation of Capital Redemption Reserve Fund ?

#### **Securities Premium Account (Section 78)**

Under this section, there are certain restrictions with regard to using the moneys lying to the credit of the securities premium account of the company.

Of late, this provision read with Section 100 of the Act has been frequently resorted to for various purposes. It is necessary to note that even though there will be adoption of the procedure prescribed under Section 100 of the Act relating to reduction of capital, companies resorting to this procedure normally obtain from the High Court concerned exemption from the need to mention the words "and reduced" alongwith its capital. Companies do not make a mention of this material matter having financial implication in the Directors' Report as required under Section 217 of the Act. Many a times, companies might have utilized the securities premium account even without compliance of Section 78 or Section 78 read with Section 100 of the Act.

It should be ensured that the company has applied the moneys, if any, lying to its securities premium account in the manner and for the-purposes stipulated under Section 78 of the Act."

### **Redemption of Redeemable Preference Shares (Section 80A)**

Section 80A contains a major provision of law highlighting the significance attached to redemption of preference shares. The provisions of this section add the protection available to preference shareholders in addition to the voting rights conferred upon them in Section 87 of the Act. The penal provisions contained in this Section are very serious and the section creates a non-compoundable offence. CLB has no power to condone generally any delay in redemption of preference shares. The power vested in CLB applies only to preference shares which have become liable to be redeemed in pursuance of the requirement of the law imposed under this section and company cannot take for granted and delay the redemption. The only way in which company may post pone the redemption without being hit by the penal clauses of Section 80A appears to be a further issue of redeemable preference shares.

### **Further Issue of Shares (Section 81)**

Section 81 is mainly deals with three requirements:

- Issue of shares on rights basis.
- Further issue of shares to persons who may or may not include existing members.
- Conversion of loans into equity.

All the above things may apply to an unlisted company or a listed company, though the provisions of this Section will not apply to private companies. Taking up one by one, it will be possible to analyse the important requirements of this section. With regard to issue of shares on rights basis, several questions normally arise. They are explained below:

*The Question* : Whether a resolution of the general meeting of the company is required?

*The Answer* : As per Section 81(1) of the Companies Act, 1956, (the Act), if a company contemplates further issue of shares after certain time (i.e, within



1 year after first allotment etc.,) such issue must first be offered to the existing members only. As per Section 81(1 A) of the Act if the shares were to be offered to persons other than (whether including existing members or not) in any manner without complying with the requirement of Section 81(1) of the Act, then only there is a requirement for obtaining a special resolution from the members of the company. Hence for a mere rights offer failing under Section 81(1) of the Act, no resolution of the company is required. However, it is needless to say that even in respect of listed companies, Clause 23 of the Listing Agreement provides the need for consent of the company in general meeting only if the issue were to be otherwise than on a rights basis.

*The Question :* Whether, in a rights issue, the Board can permit the right to apply for additional shares even to the renounees?

*The Answer :* The Board has an unfettered right in the matter of disposal of shares that have not been subscribed. Therefore such shares can very well be offered to members to whom the offer of rights has been made or to any other person to whom such members choose to renounce the rights in accordance with Section 81(1)(c) of the Act.

Granting an option to subscribe for additional shares to the members or to their renounees is very well within the statutory powers conferred upon the Board of Directors by Section 81(1)(d) of the Act. As long as such a right to apply for additional shares is restricted to shares remaining unsubscribed out of the total number of shares offered and as long as such right to apply for additional shares is part and parcel of the rights offer itself and the details of such a right have been spelt out clearly in the Letter of Offer itself, there is no problem.

*The Question :* Will such offer of additional shares would be tantamount to a preferential issue within the meaning of Chapter XIII of the SEBI guidelines?

*The Answer :* A resolution of the company in a general meeting is not required for the offer of rights shares and there is no change in the position even if there be included the right to apply for additional shares.

As per Clause 13.0 under Chapter XIII relating to Guidelines for Preferential Issues, the Preferential Issue of Equity shares / Fully convertible Debentures (FCDs) / Partly Convertible Debentures (PCDs) or any other financial instruments which would be converted into or exchanged with equity shares at a later date, by listed Companies whose equity share capital is listed on any stock exchange, to any select group of persons under Section 81(1 A) of the Act, on Private Placement basis, shall be governed by those Guidelines.

The term 'Preferential Allotment' means an issue of capital made by a body corporate in pursuance of a resolution passed under sub section (1A) of Section 81 of the Companies Act, 1956.

As the Guidelines specifically refer to (a) issue of shares etc., to any select group of persons (b) an issue under Section 81(1A) of the Act and (c) to such issue on a Private Placement basis, any issue on a rights basis will not fall under the specific conditions laid down under Chapter XIII of the Guidelines relating to preferential issues.

As per definition given in sub-Clause (xxv) of Clause 1.2.1 in Chapter I of SEBI Guidelines, "Rights Issue means an issue of capital under sub-section (1) of the Section 81 of the Act, to be offered to the existing shareholders of the Company through a letter of offer. An issue of shares including granting an option to apply for additional shares to eligible members or their renounees covered by sub-section (1) of Section 81 of the Act cannot attract the provisions of Chapter XIII of the Guidelines.

It is interesting to note certain provisions of the SEBI takeover code also. Under Takeover Regulation 3 (1) (b), any allotment pursuant to an application made by a shareholder for rights issue to the extent of his entitlement and up to the percentage specified in Regulation 11 of the said Regulations is outside the said code. As per Regulation 11 of the said Regulations, an acquirer acquiring 15% or more but less than 75% of shares or voting rights is required to make a public announcement as per the said code. However the limit mentioned in Regulation 11 of the Regulations will not apply to the acquisition by any person presently in control of the company and who has disclosed in the letter of offer that he intends to apply for additional shares beyond his entitlement if the issue goes undersubscribed. Provided further in the said Regulations that the above exemption from the code is not available to any acquisition that results in change in control of management of the Company.

Therefore offer of additional shares as part and parcel of the rights shares would not tantamount to a preferential issue within the meaning of Chapter XIII of the SEBI Guidelines.

It can be seen that further issue of shares would fall under the expression preferential allotment of shares. Preferential allotment of shares in the case of a listed company is governed by the SEBI (Disclosure and Investor Protection), Guidelines, 2000. Similarly, preferential allotment of shares of unlisted public companies is governed by Unlisted Public Companies (Preferential Allotment) Rules, 2003.

Compliance of guidelines of SEBI in the case of listed companies are regulated by SEBI. With regard to the Unlisted Public Companies (Preferential Allotment) Rules, 2003, it is necessary to note that the following are the basic requirements of the said Rules:

- It must be noted that there has to be an enabling clause in the Articles of Association of the Company that intends to make the preferential allotment of shares.
- There has to be a special resolution, which is duly passed in a general meeting and which is valid only for a period of 12 months from the date of passing. In other words, the preferential allotment should be completed within the said 12 months.
- The explanatory statement should contain certain specific disclosure requirement.
- It is necessary to obtain a certificate from a Company Secretary in practice and place before the general meeting in which the proposal

with regard to preferential allotment would be considered and the certificate should state that the said allotment is being made in accordance with the said Rules.

In respect of conversion of loans into shares, there are certain important conditions subject to which these conversions will fall within the exceptions contained in this section. There is also need to comply with the Public Companies (Terms of Issue of Debentures and Raising of Loans with Option to Convert such Debentures or Loans to Shares), Rules 1977.

#### **Issue of Duplicate Share Certificates (Section 84)**

The company has to comply with the provisions of the Companies (Issue of Share Certificates) Rules, 1960 with regard to issue of duplicate / fresh share certificates.

#### **Issue of Shares with Differential Rights (Section 86)**

Under this section, it is necessary to comply with the Companies (Issue of Shares with Differential Voting Rights) Rules, 2001. In respect of listed companies, the Rules require the passing of necessary resolution through a postal ballot. In respect of all companies, the Rules also require a detailed explanatory statement containing certain specific disclosures.

#### **Alteration of certain matters relating to Share Capital (Section 94)**

Section 94 of the Act requires the passing an ordinary resolution in general meeting for altering the conditions contained in its memorandum in relation to the share capital of a company. This Section rightly applies only to limited companies with share capital. Section 16 of the Act provides that a company cannot alter the conditions contained in its memorandum except in the cases, in the mode, and to the extent, for which express provision has been made in the Act. Section 94 of the Act is an illustration with regard to alteration of the capital clause of a limited company in relation to the following:

- Increase the share capital.
- Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares.
- Convert all or any of its fully paid shares into stock, and reconvert that stock into fully paid up shares of any denomination.
- Sub-division of shares.
- Cancellation of unissued shares.

#### **Reduction of Share Capital (Sections 100 to 105)**

Under these sections, the prerequisites, procedures and penalties in relation to reduction of share capital have been provided. Interestingly any action under this section is verified by the court before which the application for reduction of share capital has been made. However in view of the significance of the subject matter, it is necessary to be careful about reduction of capital

and necessarily the procedural aspects thereof. In this context, it is necessary to ensure that the following requirements have been complied with.

### **Variation of Shareholders Rights (Sections 106 and 107)**

The company has varied the rights of holders of special classes of shares and the variation of rights has taken place in accordance with the provisions of the Act. It is duty of Company Secretary to confirm that.

### **Transfer of Shares (Section 108)**

In the case of listed companies, transfers undergo a lot of process and in the demat era, there may not really be any need or control over transfers. In respect of private companies, it is necessary to remember the absolute need for compliance of provisions of the Articles of Association, because the Articles could contain certain restrictions. Most of the cases under Section 111 and some of the cases under Section 397 and 398 arise out of non-compliance of the provisions of the Articles of Association.

In respect of public companies, the shares are freely transferable and there cannot be restriction in the Articles of Association. A perusal of Section 111A of the Act would reveal that there are only a few options available to the Board of Directors for refusing to register the transfer of shares.

### **Appointment of Nominees by Shareholders and Debenture holders (Section 109A)**

A company has to record particulars of appointment/revocation of appointment of nominees of its shareholders / debenture holders ?"

### **Limitation of Time for Issue of Certificates (Section 113)**

It is to be ensured that the company has delivered all the certificates within the time limit specified or within such extended time in respect of debentures after allotment / registration of transfer

### **Special Provisions Relating to Debentures (Section 117 to 122)**

#### *Section 117A*

- The debenture trust deed should be in the prescribed form and it should be executed within the prescribed time. However, it is necessary to note that the Act has not yet prescribed anything so far.
- The copy of the trust deed should be made available for inspection for debenture holder and he shall also be entitled to have a copy thereof.
- Failure to permit inspection or give copy, invites the penal clause contained in sub-section (3) of Section 117A of the Act.

The mischief addressed by this section is applicable only when the company had issued debentures and if it had refused an inspection of the debenture trust deed or to give a copy of the same.

*Section 117B*

- The provisions of this section apply when the company issues debentures to public.
- Unless, the company appoints one or more persons who are eligible to be appointed as debenture trustees after obtaining the consent of such persons, it is not possible to issue a prospectus or letter of offer to the public for subscription of its debentures.
- The debenture trustee has certain functions to be carried out as stated in sub-section 3 of Section 117B of the Act.
- The debenture trustee may file a petition before the Company Law Board at any time when the assets are insufficient or likely to become insufficient to discharge the principal amount as and when becomes due.

*Section 117C*

- It is necessary to create a debenture redemption reserve out of the profits every year until debentures are redeemed.
- The amounts credited to debenture redemption reserve (DRR) except for the purpose of redemption of debentures.
- The Ministry of Company Affairs has clarified that quantum of reserve created should be adequate to meet the amount required for redemption including the interest payable thereon.
- Section 117C of the Act will apply to debentures issued and pending to be redeemed and DRR is must for debentures issued before the inserting of Section 117C. Section 117C came into force from 13/12/2000.
- Section 117C of the Act will apply to non-convertible portion of debentures issued.
- Where the company fails to redeem the debentures, the debenture holders may seek necessary directions from Company Law Board and any default in complying with the order of the Company Law Board would be a punishable offence.

*Section 118*

- Under this section it is necessary to forward a copy of any trust deed to any debenture holder or member within 7 days of receipt of a request together with payment of prescribed fee.
- Where a company refuses to forward a copy of the debenture trust deed as requested, the default is a punishable offence and the aggrieved debenture holder or member may approach Company Law Board for necessary directions.
- The debenture trust deed is open for inspection in the same manner as if it were the register of members.

From the above position of law, it is possible to come to the conclusion that the legislature would take a serious view of any default in delivery of copy of debenture trust deed. However this situation might arise rarely.

#### *Section 122*

This section makes a contract with a company to take up and pay for any debentures of the company could be enforced by a decree for specific performance.

#### **Analysis of Part V of the Companies Act**

Part V of the Act contains Sections 124 to 145 and this part deals extensively with the issue of registration of charges. In the matter of filing of particulars of charges, there have been many cases of failure to file particulars of charges and resultant hardship to creditors who are mostly banks and financial institutions. The laudable objective with which the legislature has made it mandatory to register particulars of charges should be taken into account in order to understand the importance of this part of the Act. A charge becomes void if its particulars are not filed against the liquidator and other creditors is another important factor which reveals the position of law concerning charges.

Considering, the number of petitions that are filed before Company Law Board, one would be able to appreciate the extent of understanding / compliance of these provisions. Banks and financial institutions raise their money from public and the entire Part V has been designed to protect public interest.

The objective of any legislation has been to protect the interest of public. The objective of this analysis is to explore the possibility of enhancing the effectiveness of the provisions of law in protecting public interest. The concept of Corporate Social Responsibility underlines the need for devising ways and means to strengthen the hands of the regulators so that there is effective enforcement of the provisions of law without much intervention into the day-to-day affairs of the company. When the legislature declares a charge as void under certain circumstances, there should be valid reason for the same and every attempt should be made to ensure that the unwary creditor does not lose his capacity to enforce the charge merely because he did not ensure the filing of the same or the proper filing of the same.

Section 127 requires companies to file particulars of properties acquired subject to charge. Section 143 requires companies to maintain a register of charges, while filing of forms under Sections 125, 127, 128, 129, 135 and 138. Maintenance of register of charges under Section 143 of the Act would be covered by a general question with regard to filing of forms and returns and maintenance of registers. Section 136 of the Act requires the company to maintain a copy of every instrument creating / modifying charges.

#### **Analysis of Part VI of the Companies Act**

##### **Registered Office of Company (Section 146)**

Registered office of a company is one of the most important provisions from the regulators point of view and public interest point of view. In these

days of virtual offices, naturally there will be question whether it is necessary to have a particular place as the registered office of a company. A perusal of the provisions of the Act and other legislations will show the importance accorded to the registered office by the legislature. There are three most important matters, viz., (i) service of notice upon the company, (ii) jurisdiction of courts, Registrar of Companies, Regional Director, Company Law Board and officers of other regulators and (iii) place of keeping books of account, statutory registers, returns and other documents and common seal. Further even in respect of other legislations, registered office of a company determines various things. It is therefore necessary to view with seriousness any omission to notify any change in the registered office of a company.

With regard to shifting of registered office of a company, the following requirements have to be noted:

- For shifting within the village or town limits, a board resolution will be sufficient.
- For shifting outside the city, village and town limits, a special resolution in general meeting is necessary.
- For shifting outside the city, village and town limits, though within the State, if the shifting removes the registered office from the jurisdiction of one Registrar of Companies to that of another Registrar, a special resolution in general meeting is necessary and the approval of the Regional Director is also required.
- For shifting the registered office from one State to another, a special resolution in general meeting and confirmation of the Company Law Board is necessary.

#### **Restrictions on Commencement of Business (Section 149)**

Under Section 149 of the Act, there are two important aspects. A company is neither entitled to exercise its borrowing powers nor entitled to commence its business unless it has obtained a certificate from the Registrar of Companies that the company is entitled to commence business. Section 149 contemplates a passing of a special resolution, if a company were to commence a new business not germane to its existing business. Section 149(2B) of the Act empowers the Board of Directors to seek approval of Central Government where the Board was able to obtain the approval of the members by an ordinary resolution only instead of a special resolution as required by Section 149(2A) of the Act.

#### **Power to Close Register of Members or Debenture Holders (Section 154)**

For listed companies the listing agreement operates in addition to the requirements of Section 154 of the Act. Unlisted companies do not resort to book closure as it is not mandatory. But where they close their books, there is hardly any compliance of this section. There are many unlisted public companies with large shareholder base and therefore it cannot be said that this section has out lived its purpose.

**Foreign Registers (Section 157 & 158)**

If the company maintains a foreign register in any state or country outside India it has to comply with the provisions relating to maintaining a copy of the same in accordance with Section 158 of the Act.

**Place of Keeping and Inspection of Registers and Returns (Section 163)**

Read with Section 164 of the Act the evidentiary value of the statutory registers and the right of members and others to inspect the registers and take extracts thereof are enshrined in Section 163 of the Act. It is a very important section and it speaks sufficiently about the intention of the legislature in this regard. The legislature had rightly created a machinery for remedying any mischief arising out of refusal of the company to permit inspection of registers or giving extracts thereof. Any refusal by the company to permit taking extracts of the Register of Members or giving a copy of the same would show the extent of transparency and disclosure policy of the company, whatsoever be the motive of the person requiring the extract or copy.

**Annual General Meeting and Requisitioned Extra Ordinary General Meetings (Sections 166 to 169)**

Sections 166 to 169 portray a very important statutory right conferred upon the shareholders of a company. If a company fails to conduct its annual general meeting, the Company Law Board, on the application of any member of the company direct the company to call annual general meeting. Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a quorum of the meeting. Similarly under Section 169 of the Act, the shareholders enjoy the right to request the Board of Directors to convene an extra-ordinary general meeting and the Board is liable to proceed to call a meeting within the prescribed time, failing which the requisitionists may themselves proceed to conduct the meeting.

**Provisions Applicable to General Meetings (Section 170 to 186)**

All procedural matters regarding general meetings are covered under these sections.

**Explanatory Statement (Section 173)**

Section 173(2) of the Act contains a very laudable provision for explaining the members in respect of specified business before the general meeting, a brief account of the nature of business, the reasons therefor together with a memorandum of interest or concern of directors. While explaining the nature of interest or concern, the interest of persons holding controlling interest in the company are not revealed if such persons do not hold directorships in the company. Barring this lacuna Section 173(2) of the Act is an exceptional provision of law taking care of the interest of the members advising them duly to exercise their voting rights after understanding the real reason behind a particular motion. In addition to the requirements of Section 173(2) of the Act there are various recent rules that require explanations to be furnished with regard to certain



specific matters. To illustrate, one may look at the provisions of the following Rules:

- The Private Limited Company and Unlisted Public Limited Company (Buyback of Securities) Rules, 1999. [Rule (4) read with Schedule I]
- Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001. [Rule 3(9)]
- Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003. [Rule 4]
- Unlisted Public Companies (Preferential Allotment) Rules, 2003. [Rule 6]

### **General Meeting under the Direction of Company Law Board (Section 186)**

Where a general meeting has been called, held and conducted pursuant to an order of the Company Law Board on the application of any director or member, it is necessary to bring it to the notice of the members in order to keep them informed of the impracticable situation that has led to the holding of such general meeting.

### **Circulation of Members' Resolutions (Section 188)**

Under this section one can find another opportunity conferred upon members for making their representations and moving motions for being passed as resolutions. In order to ensure that there is no misuse, this section incorporates adequate checks and balances.

### **Filing of Resolutions and Agreements (Section 192)**

Section 192 of the Act is a special provision requiring the filing of Form No.23 duly accompanied by resolutions, agreements and explanatory statements. It is necessary to emphasize that there has to be a specific application of mind with regard to compliance of Section 192 of the Act.

In order to appreciate the significance of Section 192 of the Act, the following ingredients of the same should be noted:

Sub-section (2) provides that every resolution or agreement which has the effect of altering the Articles of Association shall be embodied in or annexed to every copy of the Articles of Association issued after such alteration. Sub-section (2) applies to cases where the Articles of Association of the company has been registered.

Sub-section (3) provides that every resolution or agreement which has the effect of altering the Articles of Association shall be sent to any member at his request.

Sub-section (3) applies to cases where the Articles of Association of the company has not been registered.

Sub-section (5) and (6) deal with cases of default in compliance of provisions of sub-section (1), (2) and (3).

Sub-section (7) of Section 192 of the Act, specifically states that the liquidator of the company should be deemed to be an officer of a company.

**Appointment of Managerial Persons (Sections 198, 269, 309, 316, 317, 386, 387, 388 and Schedule XIII)**

Section 198 provides that the total managerial remuneration shall not exceed 11% of the net profits of the company. Sub-section (3) of Section 198 of the Act states that within the said ceiling, a company may pay a monthly remuneration to its managing or whole-time directors as per Section 309 of the Act or to its manager as per Section 387 of the Act. Sub-section (4) of Section 198 underlines the need for government approval, if the remuneration were to be not in accordance with Schedule XIII, if a company has no profits or when its profits are inadequate.

Section 309 of the Act provides that the total remuneration payable to a director who is in the whole-time employment in the company or a managing director shall not exceed 5% where there is one such director or 10% if there is more than one such director for all of them together.

Section 269 of the Act provides that the appointment of managerial person is compulsory and if the appointment is made in accordance with Schedule XIII, approval of Central Government is not required.

Schedule XIII to the Act contains two parts. Part I contains ceiling on remuneration where the profits are adequate. Part II contains ceiling on remuneration if profits are not adequate or there is no profit. Interestingly, the concept of adequate profit is not defined in the Act.

Section 316 of the Act provides the ceiling on number of companies of which one person may be appointed managing director and ceiling on tenure of office of managing director. Similarly, Section 386 of the Act provides the ceiling on number of companies of which one person may be appointed manager.

In the light of what has been above, the following questions have to be addressed:

1. Procedural aspects relating to appointment of managing director or whole-time director or manager including the filing of the necessary return and approval requirements if necessary.
2. Total remuneration payable to directors/whole-time directors /managing directors /managers.

In the process the company has to ensure that the provisions of Sections 198, 269, 309, 316, 317, 386, 387, 388 and Schedule XIII to the Act in the appointment of / remuneration to its managing director / whole-time director/ manager?" have been complied with.

**Provisions Relating to Declaration and Payment of Dividend (Sections 205, 205A, 205B, 205C, 206, 206A AND 207 of the Act)**

Briefly stated, Section 205 of the Act provides as follows:

- Dividend shall be declared out of profits, after providing for depreciation and losses, if any, to the extent necessary.

- Board may declare interim dividend.
- Within 5 days of declaration of dividend, amount should be transferred to a separate bank account.
- Companies (Transfer of Profits to Reserves) Rules, 1975 should be complied with.
- If a company has failed to redeem preference shares, it should not declare dividend on equity shares.

Section 205A of the Act provides as follows:

- Where any dividend declared by the company remains unpaid or unclaimed, the total amount which remains unpaid or unclaimed, should be transferred, within 7 days from the expiry of 30 days, to a special account called 'Unpaid Dividend Account' of the company in any scheduled bank.
- If a company proposes to declare dividend out of accumulated profits, even when in a particular financial year, there is inadequacy or absence of profits, the company has to comply with the provisions of the Companies (Declaration of Dividend Out of Reserves) Rules, 1975. Where such declaration is not in accordance with the said Rules, it requires previous approval of Central Government.

Section 205B of the Act has lost its relevance after the coming into force of Section 205C, though Section 205B is still in the statute book and it could be invoked in certain old cases.

Section 205C of the Act provides for transfer to Investor Education and Protection Fund (IEPF) certain moneys remaining unpaid / unclaimed with the company after certain period of time. The transfer of moneys falling under this section should be carried out in accordance with the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001. As far as dividend is concerned, the Rules requires the transfer of all unpaid and unclaimed dividend within thirty days after the expiry of seven years from the due date within which the company should have paid the dividend. The importance of this requirement would be understood by referring to the disclosure requirement incorporated in this respect in the Schedule VI (format of Balance Sheet) and in Schedule V (format of annual return).

Section 206 of the Act provides that the dividend shall be paid only to registered shareholders or to their order or to their bankers.

Section 206A of the Act requires keeping in abeyance of dividends, rights shares and bonus shares pending registration of transfer of shares. However it should be noted that though it is a statutory requirement to keep these benefits in abeyance, such occasions do not arise frequently and with dematerialisation of shares, the opportunities for keeping in abeyance have got further reduced.

When the instrument which was originally tendered to the company was returned to the shareholder and a new transfer instrument was tendered instead

of the returned one, the Company Law Board held that Section 206A will not apply to such cases because the registration of transfer was not kept pending at the time of issue of rights and bonus shares.

Section 207 of the Act provide for certain penalties and payment of interest in the event of any failure on the part of the company to pay declared dividend.

Thus under compliance process, the following questions may be incorporated:

- (a) "Where a company has declared any dividend or interim dividend, whether the company has complied with the provisions of Section 205 and 205A of the Act with regard to payment of dividend within the prescribed 30 days as required under Section 205A (1) of the Act?"
- (b) "Whether the company has complied with the Companies (Transfer of Profits to Reserves) Rules, 1975 and Companies (Declaration of Dividend Out of Reserves) Rules, 1975, if applicable?"
- (c) "Whether the company has complied with the provisions of Section 205C of the Act read with the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001?"

### **Books of Account (Section 209)**

The major requirements of this section are keeping proper books of account and keeping them at the registered office of the company and if the Board wants to keep them elsewhere, the relevant Form No.23AA should be filed at the office of the Registrar of Companies. The question of filing the prescribed form would be covered by the general question relating to returns and registers. If the company does not keep proper books of account, in such a case there is supposed to be a show cause notice served upon the company and its directors from the Registrar.

### **Inspection of Books of Account (Section 209A)**

Section 209A of the Act provides for inspection of books of account by the Registrar of Companies, other authorised officers of the Central Government or the SEBI. If an inspection were to be ordered, it is the duty of every director, officer, other employees of the company to provide all the books of account and such other explanations and assistance as may be necessary. If the books of account are not produced or if the officers of the company do not cooperate, the inspecting officer has been empowered to notify the Ministry of Company Affairs, which is empowered to take such action as may be necessary. Similarly, if the books of account reveal contraventions of provisions of law, commissions and omissions, it is again for the inspecting officials to take appropriate action against the company, directors and other officers who are liable for the same.

### **Financial Year (Section 210)**

The major requirement under Section 210 of the Act relates to the period of financial year. This section also provides for an approval by the Registrar of

Companies, if the accounting period should be extended beyond the prescribed maximum period of 15 months.

### **True and Fair View and Disclosure of Particulars (Section 211)**

The major requirements under this section are compliance of accounting standards, disclosure of particulars in accordance with the requirements of Schedule VI, the need to obtain specific exemption from Central Government for abstaining from disclosure of quantitative particulars, the need to ensure a true and fair view in so far as it pertains to the balance sheet and profit and loss account of the company. The entire requirements are supposed to be an audit questions from the point of view of audit of accounts to be carried out by a chartered accountant in pursuance of the audit related provisions of the Act.

### **Furnishing of Particulars of Subsidiary Companies (Section 212 read with Section 213)**

Under these sections, it is necessary to attach with the balance sheet of the holding-company, the balance sheet, profit and loss account, the directors' report, auditor's report and certain other statements and reports of subsidiary company. The holding company may obtain exemption from complying with the provisions of this section, by making an application to the Central Government. The statutory right of the representatives and members of the holding company to inspect the books of account of its subsidiaries as enshrined in Section 214 of the Act, is basically an important provision contained in the Act aimed at disclosing to the shareholders of the holding company certain basic details in relation to its subsidiaries.

### **Board's Report (Section 217)**

Directors' Report acts as the communication bridge between the directors and the members of a company. With the requirement relating to specific disclosures, with the need for necessary explanation to qualifications of statutory auditors, with the introduction of directors' responsibility statement, the report serves a very important purpose. Section 621 of the Act enables every member to file a complaint against a company and its directors for any offence under the Act. If a member feels aggrieved due to failure of the Board of Directors to disclose in Board's report any material information, the member may choose to file a complaint directly. In addition to the requirements contained in Section 217 of the Act, there are other Rules and Regulations such as the ESOP Guidelines of SEBI, Directions of RBI concerning non-banking financial companies, Schedule XIII to the Act also requires the board to make certain disclosures in the Board's report.

There is another important aspect of the disclosure requirements in the Directors' Report. While there are various agencies for scrutinising the prospectus thoroughly, there is no agency for verifying the implementation of the project as stated in the offer document. It is necessary "to check-the utilisation of proceeds and report whether there are any serious deviation or irregularities. Such a disclosure should be defined as a material information falling within the

purview of Section 217 of the Act. The Company Law Board observed as follows:

“It is clear that regulatory authorities which have authorised public issues did not monitor the utilization of the funds raised from the public. The CLB observed that the absence of such monitoring system was perhaps one of the reasons for this Company's position of being what it was. The CLB further held that in the larger interests of the public shareholders, and in the interest of the Company, certain suitable remedial steps had to be ordered, as it was clear that the management was guilty of commission and omission” .

Though Section 217 of the Act requires the Board of Directors of a company to report all material information to the shareholders and more particularly all matters having financial implication and those that would cast an impact on the profits of the company, there is hardly any compliance in letter and spirit.

Therefore it is necessary to include the following questions within the scope of the compliance:

- (a) “Whether the Board has disclosed in its report all material particulars in compliance of Section 217 and other provisions of the Act and the Rules and Regulations thereunder and the SEBI Guidelines and regulations and the directions of Reserve Bank of India, as the case may be?”
- (b) “Whether the company has utilized the proceeds received from the issue for the purposes and in the manner stated in the offer document and where there has been deviation, has the management explained the reasons thereof in the Directors Report?”

### **Right of Member to Receive Copies of Balance Sheet (Section 219)**

This is a very important statutory right conferred upon every member to get from the company a copy of duly approved / authenticated balance sheet, profit and loss account, the report of the directors and auditors in respect of every accounting year. The company should also send all the above to every trustee of debenture holders and all other persons who are entitled to receive notices of general meetings of companies.

One has to ensure that the company has despatched, to every member, debenture trustee and every other person who is entitled to receive notices of general meeting, a copy of balance sheet, profit and loss account, auditors report and all other documents that are required to be annexed/attached to every balance sheet in accordance with Section 219 of the Act.

### **Filing of Balance Sheets with Registrar (Section 220)**

The following are the two important provisions of this section:

- Filing of 3 copies of the balance sheet, etc. whether or not they have been laid / adopted at the annual general meeting or not.
- Filing a statement to the Registrar of Companies containing the reasons

if the balance sheet has not been adopted or if the annual general meeting has not been held.

However the Companies (Amendment) Act, 2006 has made significant change in the process by introducing e-filing mechanism.

### **Provisions relating to Appointment of Director (Sections 252 to 266)**

The following are the major requirements of these provisions:

- Minimum and maximum number of directors of a company and the requirement for approval of Central Government for increasing the maximum number of directors (Sections 252 and 259) Determination of office of directors by retirement by rotation (Sections 255 and 256).
- Automatic appointment of directors who are liable to retire by rotation in certain cases (Section 256).
- Eligibility to stand as a candidate for election to the office of a director (Section 257).
- Power to increase or reduce the number of directors (Section 258).
- Appointment of additional director (Section 260).
- Filling up of casual vacancies (Section 262).
- Appointment of directors to be voted individually (Section 263).
- Consent to act as directors (Section 264).
- Proportional representation for the appointment of directors (Section 265).
- Restrictions with regard to appointment / advertisement of director in any prospectus / statement in lieu of prospectus (Section 266).
- Disqualification of Directors (Section 274).
- Maximum number of Directorship (Section 275).
- Automatic vacation of office (Section 283).
- Removal of directors (Section 284).

Though a company is created as an artificial person with contribution to its capital coming from "several members", the directors are the persons who run the day-to-day affairs of the company and manage the business of the company. Section 290 of the Act contains a laudable provision. It provides that if subsequent to the appointment of a person as a director, any defect is discovered, such discovery will not affect the validity of acts of such a person in whose appointment a defect was discovered.

For illustration, in the case of banking companies, the Banking Regulation Act, 1949 provides that the director of a bank cannot continue in office for more than 8 years continuously [Section 10A(2-A)]. This implies that if a person

is appointed as a director of a banking company on a particular day, he has to vacate the office on the expiry of 8 years from the date of his appointment. If he were to resign a few days before the expiry of the 8th year and if the banking company were to appoint another person in his place under Section 262 of the Act, can such person who filled the vacancy continue beyond the date on which the original director would have vacated his office by operation of law. Assuming a person who fills up the casual vacancy caused in such a manner, he cannot continue in office beyond the period upto which the original director would have continued in office. Disregarding the above position of law, if the person appointed under Section 262 continues in office, it could be said that there is a fundamental flaw in such continuance. However, the validity of all acts of such director is saved by Section 290 of the Act.

Therefore, the question whether the Board of Directors of the company is properly constituted or not, encompasses within its ambit a lot of questions of fact and law. Several such illustrations can be given in this regard. It goes without saying that answers to the above question would require a thorough examination of the provisions of not only Sections 252 to 266 of the Act, but also several other sections of the Act such as Sections 274, 269, 283, 284, 295, 397, 398 and many other laws going beyond the barriers of the Companies Act.

### **Passing of Resolutions by Circulation (Section 289)**

Under this section the following are the requirements:

- Circulation of the draft resolution together with necessary papers to all the directors or to all the members of the committee, then in India.
- It is necessary to ensure that the number of persons in India to whom the resolutions and the papers have been circulated is not less than the quorum fixed for a meeting of the Board or committee as the case may be.
- The resolution and the necessary papers should also be circulated to all other directors or members of committee at their usual address in India.
- The resolution should have been approved by the directors as are then in India or by a majority of them who are entitled to vote on the resolution.
- By necessary implication, it should be understood that an interested director who cannot be counted for quorum purposes in a physical meeting, cannot vote when a draft resolution is circulated.

Again by implication, it should be understood that atleast a majority of directors who are then in India and who are entitled to vote should have voted in favour. It means a director may be a person resident outside India. But if he was in India at the time of circulation of resolution, the draft resolution and other papers should be sent to him and his presence would be counted for the purpose of quorum and also for the purpose of determining the passing of the



resolution. It is needless to say that the resolution can be deemed to have been passed only after it receives the consent of a majority of the directors who are then in India and who are entitled to vote.

Considering the fact that the law contained in Section 289 of the Act requires a thorough compliance so that no defect is noticed in any resolution that is passed by circulation.

### **Powers of Board of Directors (Sections 291, 292 AND 293)**

The Board derives general powers under Section 291 of the Act. Section 292 of the Act requires certain powers to be exercised only by means of resolutions passed at meetings of Board. Section 293 of the Act places certain restrictions on the powers of Board. Under Section 293 of the Act in order to exercise certain powers, the Board of a public company would require the consent of the company in general meeting. While it is possible to look at compliance of these provisions on a stand alone basis in respect of select transactions, it is advisable to ensure the compliance of Section 292 and Section 293 of the Act thoroughly so that the legislative intention is taken care with a focus towards it. There are many occasions when non-compliance of these sections has been pressed into service in order to question the validity of a transaction. While the doctrine of indoor management would protect third parties from such threats, it can always cause a lot of nuisance and thereby result in loss of valuable time, energy and money.

### **Audit Committee (Section 292A)**

This section offers a corporate governance tool and provides the need for constitution of audit committees for unlisted companies also. In respect of listed companies, the clauses of the listing agreement are also to be complied with.

### **Sole Selling Agents (Section 294 & 294AA)**

The following question would be adequate to capture the important compliances of the above sections.

"Whether the company has obtained the approval of its members and if necessary, also the approval of Central Government as per Sections 294 and 294AA of the Act in respect of sole selling agents, if any, appointed during the year?"

### **Loans to Directors (Section 295)**

Section 295 of the Act creates a very important requirement. Prior approval of Central Government should be obtained before a public company lends or gives guarantee or provides security to or for the benefit of any specified person or firm' or company. Sub-section (1) of Section 295 of the Act contains 5 clauses and each clause contains a description of a specified person or firm or company. If a company intends to give any loan or provide any security or give any guarantee as security for the repayment of any loan given by any person to any person or firm or company specified in the said clauses, prior approval is

necessary. In the era of independent directors would such transactions require prior approval of Central Government is a different question altogether. If a company contravenes the requirements of Section 295, the directors responsible for the contravention are not only liable to be punished for such contravention but also they might fall prey to the operation of law relating to automatic vacation of office contained in Section 283 of the Act. By a circular, the Ministry of Company Affairs has issued a checklist for being followed in respect of matters falling under Section 295.

### **Contracts requiring certain Approvals (Section 297)**

Under this section, if a contract or arrangement involves sale / purchase or supply of any goods, materials or services or for providing underwriting services (specified transactions) were to be entered into by a company with a specified person, firm or company, the contract or arrangement requires the approval of the Board of Directors and in the case of companies having a paid up share capital of not less than Rs.1 Crore, prior approval of the Central Government also. The following parties require such approvals for entering into any contract or arrangement with a company for specified transactions.

- Director of the company.
- Any relative of the Director of the company.
- A firm in which such a director or relative is a partner.
- Any other partner in such a firm.
- A private company of which the director is a member or director.

Thus, in respect of specified transactions when specified parties propose to enter into any contract or arrangement with a company, the company should have the approval of the Board of Directors and, wherever necessary, approval of Central Government also.

### **Disclosure of Interest by Directors (Section 299)**

As a stand-alone section, Section 299 is only a procedural formality. Read with Section 300, 287, 299, 295 and such other similar sections, the disclosure ought to be made by directors as a general requirement under Section 299 of the Act is very useful. Sub-section (6) of Section 299 of the Act states that if the interest of a director of one company in another company arises solely for the reason that he holds less than 2% of the paid up capital of other company, he need not be considered as interested in the other company. However if the director of a company is also a director of another company or if any one of his relative is a director of another company, irrespective of whether such director holds any share in the other company or not, he should be deemed to be interested in the other company. Any failure to disclose interest results in automatic vacation of office under Section 283 of the Act. Therefore the Act envisages this provision as an important provision and in the era of Corporate Governance, these objectives are laudable. Under Section 305, every director is required to disclose particulars of other offices held / relinquished / vacated by him in other companies within 21 days of appointment / relinquishment.

### **Holding of Office or Place of Profit by Directors and/or their Relatives (Section 314)**

Section 314 of the Act read with, the Director's Relatives (Office or Place of Profit) Rules, 2003, contains two major requirements with respect to appointment of director or any relative of a director to an office or place of profit or a relative of a director who is holding an office or place of profit in a company. The twin requirements of this section are the special resolution and the approval of Central Governments provided the remuneration is beyond a certain ceiling as per the section and / or the said Rules. This section ensures that the directors of companies do not take undue advantage of the position held by them by taking up offices or places of profits in the company, or by appointing their relatives to any office or place of profit in the company.

It is to be checked, "whether the company has complied with Section 314 of the Act and The Director's Relatives (Office or Place of Profit) Rules, 2003 in relation to appointment of a director or any relative of a director to any office or place of profit or appointment of any relative of a director who is already holding an office or place of profit to any office or place of profit?"

### **Inter-Corporate Loans and Investments (Section 372A)**

Section 372A requires companies having proposals for inter-corporate loans, investments, guarantees, securities to limit the total inter corporate exposure, whether by way of loans or investments or securities or guarantees to certain level. The following compliance requirements are noteworthy:

- As per Section 372A the total inter-corporate exposure should not exceed 60% of the aggregate of the paid up capital and free reserves or 100% percentage of the free reserves.
- The proviso under sub-section (1) states that with a special resolution passed in a general meeting the said ceiling can be exceeded.
- Sub-section (8) contains certain cases of loans, investments, guarantees and securities in respect of which the entire Section 372A will not apply.
- Sub-section (3) provides a ceiling on the interest rate applicable for loans.
- Sub-section (2) provides that the resolution sanctioning inter corporate loans / investments/ guarantees / securities should be passed at a meeting of a board with the consent of all the directors present at the meeting.
- Sub-section (2) also requires prior approval of public financial institution referred to under Section 4A of the Act if any term loan is subsisting.
- Sub-section (4) provides that if a company has defaulted under Section 58A, it cannot make any inter corporate loans / investments / guarantees / securities.
- Sub-section (5) and (6) provide for the need to keep and maintain a register of investments and at the registered office of the company

and states that the said register can be permitted for inspection in the same manner as if it were the register of members.

- Under sub-section (7) the Central Government is empowered to issue necessary guidelines.
- By a circular, the Department of Company Affairs has issued a checklist for being followed in respect of matters falling under Section 372A.

As seen above, Section 372A is one of the most important sections of the Companies Act and therefore, it is essential that compliance of Section 372A needs close monitoring.

### **Appointment of Company Secretary and Issue of Compliance Certificate (Section 383A)**

Whether a company has appointed a whole time company secretary is a question, which is seldom asked. Many a times, statutory auditors used to have a doubt, whether to make a statement in their report about the vacancy. However, as per the present requirement, auditors are not under any duty to report whether the company has appointed a company secretary or not.

Given the fact that Section 383A is in statute book to ensure that the company carries out all its statutory obligations not only under the Companies Act but also under other legislations, it is necessary to ensure that "whether the company has appointed a whole time company secretary as per Section 383A of the Act?"

### **Scheme of Compromise, Arrangement etc. (Section 390 to 392A)**

Registration of every sanctioned scheme or arrangement is mandatory as per Section 394(3) of the Act. Though all other formalities concerning schemes or arrangements undergo a thorough scrutiny leading to sanction or otherwise, the registration part goes unchecked. It is necessary to check "Whether the company has registered the order of the court, if any, with RoC as required under Section 394(3) of the Act?"

### **Acquisition of Shares of Another Company (Section 395)**

Under Section 395 of the Act, the following are the salient features:

- Facility for acquisition of minority stake.
- The trigger for the operation of the compulsory acquisition of the stake of the minority is the notice to be issued to them by the Transferee Company within 2 months of the expiry of the period of 4 months envisaged under Section 395 of the Act. But even without going through the grind, if an acquirer is confident of acquiring the entire control, there is no need to go through Section 395 of the Act. It is purely an option recognized by the statute.
- While acquisition through a route otherwise than the one stipulated under Section 395 of the Act is possible, there is no possibility of acquiring the minority stake as a matter of statutory requirement in

a case where the dissenting shareholders hold less than 10% in value of the share capital of the Company.

If a company acquires the shares of another company through Section 395, the circular should be registered in the prescribed form/manner and the company is liable to acquire the minority holdings within the prescribed time. If the company fails to register the circulars / if the company fails to buy the shares held by dissentient/minority shareholders, such defaults on the part of the acquiring company might go unnoticed.

### **Oppression and Mismanagement (Section 397 to 407)**

The provisions relating to oppression and mismanagement are considered to be very effective in resolving disputes between shareholders / directors representing different shareholder groups. So much so that these disputes are often referred to as battle for corporate management, control and ownership. At the same time, in such situations, the underlying truth is that there are under currents and it signals the need for abundant caution to be exercised by minority shareholders, creditors and other shareholders.

One has to check "Whether any petition / application has been filed against the company or its directors under Section 397 / 398 of the Act and whether the company/directors have complied with the order of the Company Law Board, if any, under Section 402 / 403 of the Act?"

### **Employees Security Deposits and Provident Funds (Sections 417 to 420)**

It is necessary to note that the Act requires security deposits collected from employees to be preserved separately and the contributions to the provident fund constituted by the company to be made without any delay. In this context, it is necessary to underline the importance of these provisions from the point of view of the interests of the employees. Particularly, in times of financial crunch, the directors might utilise these monies for day-to-day purposes and therefore there must be an effective mechanism, which prevents the management from doing so.

### **Appointment of Receivers and Managers (Section 421 to 424)**

Under Section 421 of the Act, appointment of receivers, managers require the filing of abstract in the prescribed form with the Registrar of Companies under Section 422 of the Act, it must be noted that an invoices should bear the information that a receiver has been appointed.

### **Analysis of other parts of the Companies Act**

Part VII of the Act relating to winding up of companies has not been covered here.

Part VIII of the Act relating to companies formed and registered under previous Companies Laws are only saving provisions and therefore not covered here.

Part IX of the Act relates to registration of joint stock companies and non-joint stock companies, which are not already registered under the Act. These provisions are enabling provisions.

Part IXA of the Act contains provisions relating producer companies and they have not been covered here.

Part X of the Act relating to winding up of unregistered companies does not offer any scope for compliance management.

Part XI of the Act relating to establishment of place of business in India by foreign companies contains certain provisions that apply to foreign companies. These companies have to comply with the relevant regulations contained in the Foreign Exchange Management Act, 1999 (FEMA) for the purpose of establishment of place of business in India. The prerequisites for setting up of a place of business in India undergo scrutiny at Reserve Bank of India.

Part XII of the Act relates to administrative matters.

Part XIII of the Act contains general provisions. Under these provisions, following aspects are to be considered :

#### **Provisions Relating to Nidhi Companies (Section 620A)**

Under Section 620A of the Act, the Central Government has the power to declare a company as a "Nidhi" or "Mutual Benefit Society" subject to the company meeting certain eligibility norms. The directions issued by the Central Government from time to time govern the day-to-day functioning of Nidhi Companies.

"In case of a Nidhi Company, it is to be checked whether the company has complied with in all respects the directions issued by the Central Government from time to time?"

#### **Compounding of Offences (Section 621A)**

This is an important provision which relieves the company and its directors from prosecutions and this section is very frequently utilised. But there is no requirement relating to reporting to the shareholders and stakeholders about the compounding fee paid, though there must be a provision for such a disclosure. The compounding fee paid by the company and its directors is not considered as a fine or penalty and the proceedings before the compounding authority are not criminal proceedings.

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## ANNEXURE M

# GLOSSARY OF BANKING AND FINANCE TERMS\*

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**Account** : Money deposited with a financial institution/bank for investment and/or safekeeping purposes.

**Account Analysis** : A banking service for business customers that provides a finely detailed statement of all activity related to the account.

**Account History** : The receipt/payment history of an account over a specified period of time, including the number of times the account was past due or over limit.

**Account Name** : The actual name of the individual or entity on the bank account.

**Accrued interest** : The amount of interest accumulated since the last payment.

**ACH (Automatic Clearing House)** : Electronic drafting system that debits an authorized bank account and electronically transfers the funds scheduled for remittance.

**Adjusted balance** : The balance that remains when all payments made during a billing cycle are subtracted from the balance from the previous billing cycle. This balance does not include finance charges for the current billing cycle.

**Amortization** : A loan repayment plan, which enables the borrower to reduce his debt gradually through monthly payments of principal and interest.

**Amortization schedule** : Schedule showing the amount of each payment applied to interest and principal and the remaining balance after each payment.

**Annual Percentage Rate** : The rate of interest charged for a loan over a year's time

**Annuity** : A life insurance product which pays income over the course of a set period. Deferred annuities allow assets to grow before the income is received and immediate annuities (usually taken from a year after purchase) allow payments to start from about a year after purchase.

**APR** : The annual percentage rate of interest, on a loan or mortgage, representing the true cost of the loan or mortgage.

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\* Collated and compiled from various websites. These do not purport to be the terms defined by the ICSI.

**APY (annual percentage yield)** : The amount of interest earned on an account after one year.

**ARM (adjustable rate mortgage)** : A loan type that allows the lender to adjust the interest rate during the term of the loan.

**Assets** : Anything of monetary value that is owned by a person. Assets include real property, personal property, and enforceable claims against others (including bank accounts, stocks, mutual funds and so on).

**Automated Teller Machines (ATMs)** : A computerized machine used for banking transactions, e.g. paying or withdrawing money, statement inquiries and transfers; operated by magnetic plastic cards and personal identification numbers (PINs)

**Auction Market** : A securities market where the prices of securities are determined by the actions of buyers and sellers transacting at a specified location.

**Audit Accountability** : Performance measurement of service delivery including cost, timeliness and quality against agreed service levels.

**Audit Risk** : The risk of giving an incorrect audit opinion.

**Authorized user** : A person who has been given permission to make changes to an account. This status must be given by the primary account user. An authorized user is not legally responsible for repaying the account.

**Automated Banking Machines (ABMs)** : Terminals that allow customers to perform many everyday banking tasks, e.g. deposits, withdrawals, bill payments and transfer between accounts.

**Automated Clearing House (ACH) System** : A domestic electronic funds transfer system.

**Available Balance** : The portion of a customer's account balance on which the bank has placed no restrictions, making it available for immediate withdrawals.

**Average daily balance** : The balance that results from adding together all the daily balances of a credit account in the billing cycle and dividing by the number of days in the billing cycle. This balance is often used to calculate finance charges.

**Average Life** : The weighted average of the maturities of various loans or bonds after taking into account agreed amortizations.

**Balance** : An outstanding amount of money. In banking, balance refers to the amount of money in a particular account. In credit, balance refers to the amount owed.

**Balance transfer** : Repayment of one credit debt with another credit source.

**Balance transfer fee** : The fee charged to transfer balances between two credit sources. This fee is often a percentage of the amount transferred.



**Balloon mortgage** : A short-term fixed-rate loan which involves smaller payments for a certain period of time and one large payment for the entire balance due at the end of the loan term.

**Balloon payment** : The final payment that is made at the maturity date of a loan or lease or balloon mortgage and pays the loan in full.

**Bancassurance** : Bancassurance symbolizes the convergence of banking and insurance. It involves distribution of insurance products through a bank's branch network.

**Bank** : A business that keeps money for customers, makes loans and provides other money-related services. An establishment for lending, issuing, borrowing, exchanging, and safeguarding money.

**Bank account** : A safe place to keep your money, where it will earn extra money.

**Bank Card** : A card issued by a bank/financial institution that identifies the holder as a customer of the institution and allows access to accounts through an ATM, also, a credit or debit card issued by a financial institution.

**Bank Card Center** : The physical facility where bank card operations are conducted.

**Bank credit** : It includes Term Loan, Cash Credit, Overdrafts, Bills purchased & discounted, Bank Guarantee, Letter of Guarantee, Letter of credit.

**Bank debits** : The sum of all cheques and other instruments charged against the deposited funds of a bank's customers.

**Bank Examiner** : The individual who performs the bank examination.

**Bank for International Settlements (BIS)** : The BIS located in Basle, Switzerland was established in 1930 to administer the post-World War I repatriations agreements. Since the 1960s, the BIS has evolved into an important International Monetary Institution, and has provided a forum in which central bankers meet and consult on a monthly basis. As an independent financial organization, the BIS performs a variety of banking, trustee, and agent functions, primarily with central banks.

**Bank Guarantee** : Bank Guarantee could be a finance guarantee or a performance guarantee. Under finance guarantee, the bank guarantees the beneficiaries (The person named in the guarantee to receive the guaranteed sum under stated circumstances), certain amount on behalf of its customers who has commercial relationship with the beneficiary. Under performance guarantee, the bank guarantees performance of a contract or goods/ services supplied under a contract by its customers. However, even in the later case, if its customers fail to deliver, it settles the claim of the beneficiary in money terms only; the bank does not fulfil the contract, obligation of its customer.

**Bank Identification** : A series of digits used to identify a particular bank.

**Bank Rate** : The interest rate paid by major financial institutions if they borrow from the Central Bank. The Bank Rate influences the rates of interest major financial institutions charge and pay their customers.

**Bank Run** : Refers to a situation of banking crisis in which depositors rush ('run') to the bank to withdraw their deposits. This creates a severe liquidity problem.

**Bank Statement** : A periodic record of a customer's account containing a summary of the deposits and withdrawals associated with a customer's bank account.

**Bankruptcy** : A court proceeding in which a debtor, who owes more than his assets, can relieve the debts by transferring his assets to a trustee.

**Beneficiary** : The individual or entity receiving the funds transfer.

**Bid price/yield** : The price/yield being offered by a potential buyer for a security.

**Bill** : Usually mistaken for commercial invoice. Bill in the banking parlance means a bill of exchange drawn by a seller on the buyer whenever he sells goods or services on 'payment later' basis. Such a transaction is also referred to as a credit transaction. The bill is routed through the bank for collection of amount from the buyer. Commercial invoice is a part of the document submitted to the bank by the seller. A bill of exchange is an order made to the buyer by the seller that in exchange for the goods or services sold by him on credit, the buyer is required to pay on a specific date a certain amount with or without interest to him or to any other directed party.

**Billing cycle** : The period of time that a credit statement covers.

**Billing statement** : The summary of all actions applied to a credit account during a billing cycle. These can include payments, purchases, finances charges, fees and other transactions.

**Bonds** : Securities which pay interest at specified intervals and the principle amount of the loan is paid at maturity.

**Borrower** : A person who received funds in the form of a loan with an obligation to repay principal with interest.

**Bouncing of Cheque/Bounced Cheque** : When the bank does not have enough funds in the relevant account or the account holder requests that the cheque is bounced (under exceptional circumstances) then the bank will return the cheque to the account holder. The beneficiary of the cheque will have not been paid.

**Bridge financing** : A loan spanning the gap between the termination of one loan (generally short-term) and the start of another (generally permanent long-term) loan. Also referred to as gap financing.

**Bridge loan** : Sometimes called a "swing loan", a bridge loan is generally a loan that is secured by a borrower's current residence to obtain the funds

needed to purchase a new home if the current residence will not be sold prior to the purchase of a new home.

**Budget** : A plan you create to control spending and manage your finances

**Canceled cheque** : A “used” cheque that has been paid and subtracted from the cheque-writer’s account. Canceled cheques have extra data on them from the bank. They are usually mailed to the writer each month with the statement, although many banks keep records that are available upon request.

**Capital** : (1) The net worth of a business defined by the amount by which its assets exceed its liabilities. (2) Money used to create income. (3) The money or other assets comprising the wealth at the disposal of a person or business enterprise. (4) The accumulated wealth of a business or individual.

**Cardholder agreement** : The written statement that defines and explains all legal terms for a credit card agreement. It includes payment terms, billing dispute procedures and communications guidelines, among other items.

**Cash** : Currency, cheques and other negotiable instruments acceptable for direct deposit by a bank.

**Cash advance fee** : A fee charged by the bank when a card holder uses a credit card to withdraw cash.

**Cash Credit** : A credit facility under which a customer draws up to the preset limit, subject to availability of sufficient security with the bank. The difference between an overdraft and cash credit account is that while the former is extended more to individuals, and less for business, the latter is extended only to business bodies. The cash credit facility is unique to India, as in most of the countries it is called overdraft. Further the cash credit facility is more or less on a permanent basis so long as the business is going on. Internationally at the end of specific period the overdraft facility is withdrawn and the customer is required to pay back the amount lent by the bank. The purpose of cash credit is for working capital. The operations are similar to overdraft.

**Cash reserve** : A requirement by some lenders that buyers have sufficient cash remaining after the closing to make the first mortgage payment.

**Cash Reserve Ratio** : Called in short CRR. This means that the bank should maintain in current accounts with the central bank. This much amount is impounded and kept in the free form. And the bank cannot lend this money. This acts as a buffer to the bank.

**Cash to close** : Liquid assets that are readily available to be used to pay the closing costs involved in a closing of a mortgage transaction.

**Cashback Mortgages** : This is when the mortgage provider lends the money for the mortgage and, in addition, a lump sum to pay for, for example, building work to be carried out.

**Cashier’s cheque** : A cheque issued by a bank, drawn on its own funds rather than on one of its depositor’s funds.

**Certificate of Deposit (CD)** : An instrument, issued by a bank or other financial institution, that is evidence of a type of savings deposit. The document includes the institution's promise to return the deposit, plus earnings at a specified interest rate within a specified period.

**Charge Cards** : Cards which can be used like a credit card but the charge has to be paid off on the due date. They usually have a high limit or no limit.

**Charges** : Money paid to the bank for services rendered. Charges include overdraft fees, charges for bouncing cheques, interest on overdraft and any charges that a business account might normally incur.

**Cheque** : Any written document instructing a bank to pay money from the writer's account.

**Cheque safekeeping** : The system under which customer's cheques are kept on record at the bank and the canceled cheques are not returned to the customer.

**Cheque Book** : A small, bound booklet of cheques. A cheque is a piece of paper produced by your bank with your account number, MICR code and cheque number printed on it. The account number distinguishes one account from anyone else's, the MICR-code is the bank's special code which distinguishes it from any other bank.

**Cheque Clearing** : This is the process of getting the money from the cheque-writer's account into the cheque receiver's account.

**CHIP and PIN** : A Chip is a small electronic insert placed into a cheque or credit card. The PIN is a four digit personal identification number which is used with the card by the card-holder.

**Clear** : A cheque "clears" when its amount is debited (subtracted) from the payer's account and credited (added) to the payee's account.

**Clearing Bank** : A bank that can clear funds between banks.

**Closing statement** : Also referred to as the settlement statement, this is the document that provides line by line detail of the financial details related to a specific real estate transaction such as the fees paid by the seller and the buyer for a purchase transaction or the fees paid by the borrower for refinances.

**Co-borrower** : A person who signs a promissory note along with the primary borrower. A co-maker's signature guarantees that the loan will be repaid, because the borrower and the co-maker are equally responsible for the repayment. Sometimes called a co-signer.

**Collateral** : Anything that a bank accepts as security against the debtor's not repaying a loan. If the debtor fails to repay the loan, the bank is allowed to keep the collateral.

**Compensating balances** : A demand deposit collected balance, kept on deposit by a customer, designed to offset the expenses of the bank for activity or lines of credit.

**Compound interest** : Interest paid on the original principal balance, and on the accumulated and unpaid interest.

**Consortium Lending** : A mechanism adopted by banks wherein banks appoint single security trustees to draft the terms and conditions of the entire group of banks involved in lending. Under consortium financing, several banks (or financial institutions) finance a single borrower with common appraisal, common documentation, joint supervision and follow-up exercises.

**Core Banking** : Core banking is a general term used to describe the services provided by a group of networked bank branches. Bank customers may access their funds and other simple transactions from any of the member branch offices. Core Banking is normally defined as the business conducted by a banking institution with its retail and small business customers. Many banks treat the retail customers as their core banking customers, and have a separate line of business to manage small businesses. Larger businesses are managed via the Corporate Banking division of the institution. Core banking basically is depositing and lending of money. Normal core banking functions will include deposit accounts, loans, mortgages and payments. Banks make these services available across multiple channels like ATMs, Internet banking, and branches.

**Correspondent Bank** : A financial institution that regularly performs services for other banks.

**Co-signer** : Another person who signs your loan and assumes equal responsibility for it.

**Coupon** : The rate of interest paid on a debt security as calculated on the basis of the security's face value.

**Credit** : In business, buying or borrowing on the promise to repay at a later date. In any credit arrangement there is a creditor (a person, bank, store, or company to whom money is owed) and a debtor (the person who owes money). In bookkeeping, credit is a sum of money due to an individual or institution.

**Credit bureau** : An agency that checks credit information and keeps a complete file on people who apply for and use credit.

**Credit History** : A record of ones borrowing and paying habits

**Credit insurance** : A coverage that pays the debt in the event of death, disability or loss of employment.

**Credit limit** : The maximum amount of money a borrower can access in his/ its account.

**Credit rating** : A financial institution's evaluation of whether a person is suitable to receive credit. Credit ratings are based on an individual's character, capacity to repay, and capital.

**Creditworthiness** : A creditor's measure of a consumer's or company's cost and future ability and willingness to repay debts.

**Cross default** : Two loan agreements connected by a clause that allows one lender to recall the loan of the borrower defaults with another and vice versa.

**Cross-rate** : The exchange rate between the currencies.

**CRR** : Cash reserve requirements is one of the tools available to the Central Bank of a country to influence and control the monetary aggregates of the country and Commercial banks are required to maintain with the central bank minimum average daily cash reserve equivalent to a specified percentage of its Net Demand and Time Liabilities (NDTL).

**Currency** : Money — anything used as a common medium of exchange. In practice, currency means cash, particularly paper money.

**Currency basket** : Arrangements whereby two or more currencies are clubbed together with defined weights, and whose exchange rate/ interest rate is determined by computing weighted average market rates.

**Currency Code** : A three letter code representing the currency of a particular country.

**Custodial Fund** : A designated sum of money granted to an individual or a department for purposes that cannot be achieved through normal procedures. Common custodial funds are petty cash funds, change funds, and revolving funds.

**Debit** : A book keeping term for a sum of money owed by an individual or institution; a charge deducted from an account.

**Debit card** : A plastic card which looks similar to a credit card, that consumers may use to make purchases, withdrawals, or other types of electronic fund transfers.

**Debt** : Money owed to others.

**Deed** : The written instrument that conveys a property from the seller to the buyer.

**Default** : A status assigned to a cardholder if he or she fails to perform or conform to all the items listed in the cardholder agreement.

**Demand deposit** : A deposit of money which is repayable by the bank on demand.

**Deposit** : Adding money to a bank account

**Deposit slip** : An itemized slip showing the exact amount of paper money, coin, and cheques being deposited to a particular account.

**Depositor** : An individual or company that puts money in a bank account.

**Depository Bank** : The bank that accepts an electronic transfer and credits it to a beneficiary bank account.

**Direct Debit** : An amount of money taken from a bank account, set up by the recipient and can vary in amount and exact time that it is taken from an account. Mortgages are usually direct debits.

**Discount** : The interest recovered upfront, especially in the case of those bills for which payment will be forthcoming after a specific or extended period.

**Down payment** : Deposit made on a large purchase. The down payment reduces the amount to be borrowed.

**Drawdown** : A transaction method that allows a customer to authorize one bank to wire in funds from a second bank. Use of drawdowns centralizes transaction decisions and cash flow to a single bank.

**Drawee Bank** : The bank on which the electronic transfer is drawn, the payor's bank.

**Electronic Funds Transfer (EFT)** : The movement of funds by non-paper means (i.e., electronically) through a payment system.

**Encryption** : The process of encoding electronic transaction information, to allow secure transmission of data over the Internet.

**Endorse** : To sign, as the payee, the back of a cheque before cashing, depositing, or giving it to someone else. The first endorsement must be made by the payee to authorize the transaction. Later endorsements may be made by whoever receives the cheque.

**Endowment Mortgage** : Interest only is paid over the term of this sort of mortgage and the capital is repaid at the end of the term by using the monies from an endowment policy.

**Expense** : Money a person pays to buy something or pay for services.

**Face value** : Face value is the amount that is to be paid to an investor at the maturity date of the security. This amount is also referred as redemption value, principal value (or simply principal), maturity value or par value.

**Factoring** : A mechanism in which a business sells its invoices to a specialist company or bank which chases payment and pays a percentage of the invoice back to the original business. The business can then continue with its work and problems from cash-flow are reduced by having money from unpaid invoices up-front.

**FBO** : For Benefit Of is used in electronic funds transfers to notate a second beneficiary or to designate a contact person or organization.

**FFC** : For Further Credit is used in electronic funds transfers to notate a second beneficiary.

**Fixed assets** : Those items of a permanent nature required for the normal conduct of a business and not converted into cash during a normal fiscal period. Fixed assets include furniture, buildings, and machinery.

**Fixed interest rate** : The interest rate that does not change for the full term of the deposit or loan product.

**Floating-rate Bond** : Bonds whose interest rate varies with changes in a pre-specified market interest rate.

**Foreign currency surcharge** : A fee charged when a card purchase utilizes a

foreign currency and it must be converted into the cardholder's home currency.

**Gilt/Government Securities** : Government securities are also known as gilts or gilt edged securities. "Government security" means a security created and issued by the Government for the purpose of raising a public loan or for any other purpose as may be notified by the Government in the Official Gazette.

**Grace period** : The length of time between the use of credit to make a purchase and the start of interest on the amount charged.

**Guarantor** : A person who is financially responsible for the repayment of a credit account but has no use privileges.

**Guaranty** : A pledge to make good a note or security in case of default by the borrower. Although the original debtor is responsible for the debt, a guarantor becomes liable in the event of a default.

**Hire Purchase** : When an item of large capital value is bought over time by paying a deposit and fixing a period over which the loan will run (usually between 12 and 60 months) and then paying fixed and equal repayments over this period.

**Identity Theft** : Use of an innocent person's details by criminals to open or use an account to carry out financial transactions.

**Identity Verification** : Process by which the financial institutions verify the customer and usually takes the form of a pass-word and the answer to an obscure personal question such as the customer's mother's maiden-name.

**Initiating Bank** : The bank responsible for sending the transfer.

**Initiator** : The individual responsible for communicating funds transfer information to the financial institution. An Office of the Treasurer staff member is the initiator for most electronic funds transfers.

**Interest** : The money a bank pays depositors for using their money, or the money a person pays when borrowing money.

**Introductory rate** : A temporarily low interest rate, used as incentive to entice a consumer to sign up for credit. After the introductory period, the rate will increase to the standard percentage.

**Joint account** : An account held by two or more people so that all can use the account and all assume legal responsibility to repay.

**LAF** : A facility by which the RBI adjusts the daily liquidity in the domestic markets (India) either by injecting funds or by withdrawing them out.

**Late payment** : A payment made later than agreed upon in a credit contract and on which additional charges may be imposed.

**Lease Purchase** : An agreement made on an item of high capital outlay (for example, a car) where the ownership is transferred to the person who is leasing



the item at the end of the contract, providing all the terms and conditions of the purchase have been fulfilled.

**Letter of credit** : A financial instrument, issued to a company or person by a bank that substitutes the bank's credit for the company's credit.

**Liabilities** : Money owed to individuals, businesses, or institutions.

**LIBOR** : London Inter Bank Offering Rate.

**Line of credit** : An agreement by a financial institution to extend credit up to a certain amount for a certain time to a specified borrower.

**Loan** : A lump-sum amount given to the customers, either in one installment or in two or three installments, and repayment over a period of time in monthly or quarterly, or half yearly or annual installments. Interest may be recovered separately from the customer who is called borrower or combined with the installment. In case it is combined with the installment it is called equated installment. If interest is recovered separately it is usually on a quarterly basis. Loans against property and for the purpose of owning flats/ apartments/ houses are known as mortgage loans.

**Lockbox** : A banking service in which payments or deposits are collected by the bank at a postal or drop box, and then processed by a special department in the bank.

**Margin Money** : Margin money is like a security deposit retained by the bank till the loan is fully settled. The banks sanction the credit limit after retaining a margin on the value of the security offered. The percentage of margin requirements varies as per RBI guidelines.

**Maturity** : The date on which the principal balance of a financial instrument becomes due and payable.

**Maturity Date** : The date when the principal (face value) is paid back. The final coupon and the face value of a debt security is repaid to the investor on the maturity date. The time to maturity can vary greatly from short term to long term (30 years).

**MIBID** : Mumbai Inter Bank Bid Rate

**MIBOR** : Mumbai Inter Bank Offer Rate

**Minimum payment** : The smallest payment a consumer can make in a billing cycle to keep the account from going into default.

**Money** : Anything generally recognized as a medium of exchange.

**Money Laundering** : This is when money gained from crime is put into a bank so that it can be accessed safely by the criminals and terrorists. It makes the proceeds of illegal activities easier to get to.

**Money Transfer** : The movement of money from one account to another.

**Money Transfer Abroad** : The movement of money from one account to another, the second being in a different country from the first.

**Monthly Product Basis** : In India, in the savings account, the product is taken on a monthly basis; the rule is interest is paid on the minimum balance in the account between the 10th and the last day of every month. This means that any credit to the account after the tenth of the month is ignored for the particular month, while debit is taken into account.

**Multiple Banking** : The mechanism wherein different banks provide finance and different banking facilities to a single borrower without having a common arrangement and understanding between the lenders.

**NEFT** : The acronym "NEFT" stands for National Electronic Funds Transfer. Funds are transferred to the credit account with the other participating Bank using RBI's NEFT service. RBI acts as the service provider and transfers the credit to the other bank's account.

**Negotiable Instrument** : A commitment to pay a specific sum of money, most commonly in the form of a cheque or draft. For an instrument to be negotiable, it must be signed by the maker, must have a specific currency value, must be made payable to a person or organization, and must be payable on demand.

**Open Market Operations** : Central banks buy bonds in exchange for money, thus increasing the stock of the money, or sell bond; thus reducing the money stock. This operation is known as Open Market Operation.

**Overdraft** : An extension of current account in which the customer is allowed to withdraw more than the credit balance lying in the account. This may be a temporary accommodation to tide over temporary cash crunch or on a regular basis. If permitted on a regular basis, withdrawals are allowed up to a ceiling (called 'a limit'), subject to availability of sufficient security with the bank. In case the overdraft is given to the business enterprises and it is for day-to-day operations, it is known as 'working capital'.

**Payee** : The person who receives a payment. This often applies to cheques. If you receive a cheque you are the payee and the person or company who wrote the cheque is the payer.

**Payer** : The person who makes a payment. This often applies to cheques. If you write a cheque you are the payer and the recipient of the cheque is the payee.

**Penalty rate** : A higher interest rate imposed on an account when it has lapsed into default.

**Personal identification number (PIN)** : A code that provides security for consumers at an ATM.

**Point of sale (POS)** : The store or other location where a transaction takes place.

**Posting date** : The date when a transaction is recognized on the account.

**Pre-qualification** : Procedure to determine how much money a potential borrower will be eligible to borrow prior to actually applying for a loan.

**Presentment** : The delivery of an electronic funds transfer or negotiable instrument to the payor's bank.

**Previous balance** : The balance that has carried over from the previous billing period.

**Price** : The price of any financial instrument is equal to the present value of the expected cash flow.

**Prime lending rate** : The interest rate that banks charge to their best customers for short-term loans.

**Principal** : The amount borrowed on a loan or the original amount of money invested.

**Proprietary credit card** : A private labeled credit card typically issued by a department store or petroleum company that can only be used at those specific outlets.

**Receiving Bank** : The bank where the beneficiary account is held.

**Refinance** : The process of paying off any existing mortgages on a home with a new mortgage loan.

**Remittance** : A facility, by which its customer at one place makes funds available to the bank and the bank in exchange, makes the funds available to the customer or any other specified party at the required place, within the same country or abroad. Remittance can be in the form of Demand Draft (DD), Mail Transfer (MT), Telegraphic Transfer (TT), Electronic mail transfer (EMT) through computer networking (or satellite channel), International Money Order (IMO) etc.

**Remote Cheque Capture** : Electronic transmission of cheque images and deposits to a bank for processing and clearing .

**Repetitive Transfer** : Repeated electronic funds transfers in which the credit parties and transaction description remain the same and only the amount and date of the transfer changes.

**Revolving line of credit** : A credit agreement (typically a credit card) that allows a customer to borrow against a pre-approved credit line when purchasing goods and services. The borrower is only billed for the amount that is actually borrowed plus any interest due.

**RFP** : A Request For Proposal is a method used to solicit business plans from corporations. The RFP process allows for the equitable and simultaneous comparison and analysis of competing businesses' product and service offerings.

**Risk** : The chance of losing money.

**Secured card** : A credit card that is guaranteed by a security deposit so that repayment of the amount borrowed is assured. This is an option to begin to repair a bad credit history.

**Secured loan** : A loan that is backed by collateral.

**Security for Loans** : Where large loans are required the lending institution often needs to have a guarantee that the loan will be paid back. This takes the form of a large item of capital outlay (typically a house) which is owned or partly owned and the amount owned is at least equivalent to the loan required.

**Service charge** : A monthly fee a bank charges for handling a checking account.

**Services** : People or companies who perform tasks for others. Example—electricity company providing electricity in exchange for money.

**Settlement Date** : Date of electronic funds transfer that determine the availability of funds.

**Settlement risk** : The risk when a settlement (in a transfer system) does not take place as expected. This can happen due to various reasons, e.g. one party may default on its clearing obligations to one or more counter parties. Thus, settlement risk consists of two components namely credit and liquidity risks. Credit risk arises when a counter party fails to meet an obligation for full value on due date and thereafter

**Share** : A unit of ownership in an investment or company.

**Society for Worldwide Interbank Financial Telecommunications (S.W.I.F.T.)** : The major international financial telecommunications network that transmits international payment instructions as well as other international financial messages.

**Spending** : Using money to buy products or services

**Standing Order** : A regular payment made out of a current account which is of a set amount and is originated by the account holder.

**Statutory liquidity ratio** : A term used in the regulation of banking in India. It is the amount which a bank has to maintain in the form: Cash, Gold valued at a price not exceeding the current market price, Unencumbered approved securities (Government securities or Gilts come under this) valued at a price as specified by the RBI from time to time. The quantum is specified as some percentage of the total demand and time liabilities ( i.e. the liabilities of the bank which are payable on demand anytime, and those liabilities which are accruing in one months time due to maturity) of a bank. This percentage is fixed by the Reserve Bank of India.

**Stock** : A certificate representing a share of ownership in a company.

**Stock & Receivables Audit** : Audit of the stock and receivables position, wherein the auditor ensures himself about the quantity, quality, composition and actual value of the stock and the debtors.

**Stop payment** : A request made to a bank to not pay a specific cheque. If requested soon enough, the cheque will not be debited from the payer's account.

**Syndication** : Making arrangement for loans for borrowers. Should not be confused for granting of loans. The bank may or may not participate in the loan process, but would assume responsibility for getting 'in principle' sanction from all participating banks and financial institutions. Syndication fees are part of non-interest income as no funds are involved in the activity. For example. An Indian company wants a foreign currency loan of 100 mn Rs. Making arrangement for this is known as syndication. Even if the arranging bank participates in the loan, by granting a portion of it, syndication is different from it. It gets paid separately for this activity.

**Tap Sale** : Under Tap sale, a certain amount of securities is created and made available for sale, generally with a minimum price, and is sold to the market as bids are made. These securities may be sold over a period of day or even weeks; and authorities may retain the flexibility to increase the (minimum) price if demand proves to be strong or to cut it if demand weakens. Tap and continuous sale are very similar, except that with Tap sale the debt manager tends to take a more pro-active role in determining the availability and indicative price for tap sales. Continuous sale are essentially at the initiative of the market.

**Term** : The loan term is the number of months that monthly payments are to be made. If the loan term is the same as the payment calculation term, the borrower will pay the loan in full during the loan term and no balance will be due. If the payment calculation term is greater than the loan term, a balance or "balloon payment" may be due at the end of the loan term.

**Tiered** : A term that applies to interest rates, where the actual rate applied depends on the balance on the account.

**Title insurance** : An insurance policy that protects the lender (and sometimes the property owner as well) against loss due to disputes over the ownership of a property and defects in the title that were not found in the search of the public record.

**Transaction date** : The date that a purchase was made or a cash advance was taken.

**Treasury Bills** : Debt obligations of the government that have maturities of one year or less is normally called Treasury Bills or T-Bills. Treasury Bills are short-term obligations of the Treasury/Government. They are instruments issued at a discount to the face value and form an integral part of the money market.

**Underwriting** : The arrangement by which investment bankers undertake to acquire any unsubscribed portion of a primary issuance of a security.

**Unsecured debt** : A loan that is not backed by collateral.

**Unsecured loan** : A loan not backed by collateral.

**Variable rate** : An interest rate that changes and is determined by adding the index rate to the previously disclosed margin.

**Verifier** : The individual responsible for completing the funds transfer.

**Weighted Average Price/yield** : The weighted average mean of the price/yield where weight being the amount used at that price/yield. The allotment to the non-competitive segment will be at the weighted average price/yield that will emerge in the auction on the basis of competitive bidding.

**Wire transfer** : A transaction that electronically transfers money from one financial institution to another.

**Withdrawal** : An amount of money taken out of an account.

**Withdrawal** : Taking money out of a bank account.

**Yield** : The annual percentage rate of return earned on a security. Yield is a function of a security's purchase price and coupon interest rate. Yield fluctuates according to numerous factors including global markets and the economy.

**Yield curve** : The graphical relationship between yield and maturity among bonds of different maturities and the same credit quality. This line shows the term structure of interest rates. It also enables investors to compare debt securities with different maturities and coupons.

**Yield to maturity (YTM)** : Yield to maturity is the total return one would expect to receive if the security is being held until maturity. Yield to maturity is essentially the discount rate at which the present value of future payments (investment income and return of principal) equals the price of the security.

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## ANNEXURE N

# **ACRONYMS IN THE INDIAN FINANCIAL SYSTEM**

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AAR - Authority of Advance Ruling  
AD - Authorised Dealer  
AER - Annual earnings rate on an investment.  
Agricultural Land - Agricultural Land - plantation, property or farm house.  
AY - Assessment Year  
BIFR - Board for Industrial and Financial Reconstruction  
CBDT - Central Board of Direct Taxes  
CCP - Customs Clearance Permit  
CCSO - Credit Card Servicing Organisations  
CP - Commercial Paper  
DD - Demand Draft  
EEFC - Exchange Earner's Foreign Currency Account  
FA - Finance Act  
FCNR - Foreign Currency Non-Resident Account  
FD - Fixed Deposits  
FE - Foreign Exchange  
FEA - Foreign Exchange Asset  
FEDAI - Foreign Exchange Dealers' Association of India  
FERA - Foreign Exchange Regulations Act  
FII - Foreign Institutional Investor  
FIPB - Foreign Investment Promotion Board  
FIRPS - Foreign Inward Remittances Payment System  
Forex - Inward remittances from any place outside India or funds held in any non-resident account in India  
FY - Financial Year  
HUF - Hindu Undivided Family  
IMF - International Monetary Fund  
ITA - Income Tax Act

LIC - Life Insurance Corporation of India  
LOA - Letter of Authority  
MF - Mutual Fund  
NBFC - Non-Banking Financial Companies  
NRE - Non-Resident External Rupee Account  
NRI - A person resident outside India who is a citizen of India  
NRNR - Non-Resident Non-Repatriable Rupee Deposits Account  
NRO - Non-Resident Ordinary Account  
NRSR - Non-Resident (Special) Rupee  
OCB - Overseas Corporate Bodies  
PIO - Persons of Indian Origin, not a citizen of India  
POA - Power of Attorney  
PPF - Public Provident Fund  
Property - Immovable property in India other than agricultural land  
PSU - Public Sector Undertaking  
RBI - Reserve Bank of India  
Repatriation - This covers not only direct remittances outside India but also credit to RFC, NRE or FCNR accounts  
Resident - Resident in India, irrespective of origin or citizenship  
RFC - Resident Foreign Currency Account  
RIFEES - Returning Indians Foreign Exchange Entitlement Scheme  
RNOR - Resident but not Ordinarily Resident  
ROI - NRI + POI  
ROR - Resident but Ordinarily Resident  
SB - Savings Bank Account  
SIA - Secretariat for Industrial Assistance  
TDS - Tax Deducted at Source  
TT - Telegraphic Transfer  
TTBR - Telegraphic Transfer Buying Rate  
TTSR - Telegraphic Transfer Selling Rate  
UTI - Unit Trust of India  
WB - World Bank

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