

GUIDANCE NOTE ON SECRETARIAL AUDIT

Release 1.4



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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PREFACE TO THE FOURTH EDITION

“Companies are recognising that failure in many non-financial areas can heavily damage the bottom line, perhaps irreparably.”

~ Beyond the Numbers (KPMG 2000)

Talk of success and failure in non-financial areas and the thought of a strong audit mechanism is inevitable. The concept of Secretarial Audit, an audit of non-financial compliances required under the applicable laws in a company, was introduced to cover for this requirement. The term got its due recognition in the Companies Act, 2013 wherein it was made mandatory for the listed companies and a specified set of companies on the basis of their financials.

That coupled with the present status of utmost significance of Secretarial Audit goes a long way in reposing and reiterating the faith of the Regulatory authorities upon not only the mechanism of such a thorough audit of non-financial compliances but also in the brigade of professionals exclusively entrusted with the honourable task of carrying out such an audit both diligently and judiciously, i.e., the Company Secretaries in practice.

Going back to the basics, since the Board of the companies own the overarching responsibility of ensuring transparent, ethical and responsible governance of the company, it is important that the Board processes and compliance mechanisms of the company are robust and secretarial audit ensures that the company has complied with the legal and procedural requirements and that the Board and other processes and compliance mechanisms are robust enough. Needless to say, the endeavours of the auditors are focused on attaining the Regulator’s objective of raising the level of compliances and plummeting the non-compliances.

All said and done, with the recognition accorded by MCA to this non-financial audit, it is imperative that the Company Secretaries undertaking the role of secretarial auditors keep upto the expectations of Regulators by submitting quality secretarial audit reports fulfilling its intended objective.

Keeping in sight the future of this more than significant entity, the Institute has revised the Guidance Note on Secretarial Audit and is pleased to release its Fourth Edition. The publication that follows highlights not only the basics but also provides an insight into the skills required, the checklists, etc. Significant focus has also been placed upon Secretarial standards, board processes and for the benefit of the professionals, a specimen Qualified Secretarial Audit Report has been inculcated as well. I am confident that this publication will prove to be of immense practical value to professionals while carrying out the secretarial audit.

I commend the dedicated efforts put in by the ICSI team led by CS Banu Dandona, Joint Director and comprising CS Deepa Khatri, Deputy Director, CS Kalpesh Mehta, Assistant Director, CS Disha Kant, Assistant Director and CS Khusbu Mohanty under the overall guidance of CS Dinesh Chandra Arora, Secretary, ICSI, in preparation of this publication.

I would like to place on record my sincere gratitude towards members of the Auditing Standards Board, ICSI for their suggestions in further strengthening the contents of this publication under the guidance of CS Vineet K Chaudhary, Chairman, Auditing Standards Board and Central Council Member, ICSI. I also take this opportunity to thank CS Ahalada Rao V, Vice President and

Chairman Corporate Laws and Governance Committee, ICSI for providing his valuable guidance on the publication. Further, I personally thank all my Council colleagues in giving their wholehearted support for bringing out this publication.

I sincerely hope that the publication shall prove to be the perfect guide of sorts in assisting the professionals in gaining better understanding and grasping the true essence of law in its effective letter and spirit.

Furthermore, inevitably, in any publication, there is always scope for further improvement. I would personally be grateful to users and readers for offering their suggestions/comments for further refinement.

Date: May 15, 2018

CS Makarand Lele

President

Place: New Delhi

The Institute of Company Secretaries of India

PREFACE TO THE THIRD EDITION

Secretarial Audit is a mechanism which gives necessary comfort to the management, regulators and the stakeholders, as to the compliance by the company of applicable laws and the existence of proper and adequate systems and processes in the company. Submission of Secretarial Audit Reports for the prescribed companies was mandated with effect from financial year 2014-15 under section 204 of the Companies Act, 2013. Since then, a number of secretarial audit reports have been filed with the Registrar.

Expectations are such that the secretarial auditors should detect the instances of non-compliances and in result facilitate taking corrective-measures. There should be an effective due diligence exercise before the issuance of Secretarial Audit Report. To regulate the quality of such reports and to guide on the same, ICSI had analysed the Secretarial Audit Reports (approximately 3500) relating to financial year 2014-15.

Further to introduce best practice standards to perform Secretarial Audit function under section 204 of the Companies Act 2013, Auditing Standards Board (ASB) of ICSI has been constituted in June, 2016. To support the members in effectively carrying out the Secretarial Audits and to enrich the Secretarial

Audit Reports, this Guidance note has been further revised and updated. The checklists have also been strengthened. The indicative list of the Sector Specific Laws applicable to various industries is also widened to include more industries.

I commend the dedicated efforts put in by CS Banu Dandona, CS Lakshmi Arun, Joint Directors, CS Deepa Khatri, CS Anamika Chaudhary, Deputy Directors and CS Disha Kant, CS Kalpesh Mehta, CA Hema Babbar, Assistant Directors in revising this publication under the guidance of CS Alka Kapoor, Joint Secretary, Directorate of Corporate Laws and Governance, ICSI.

I further appreciate and acknowledge the efforts of CS Vineet K. Chaudhary, Central Council Member and Chairman, Corporate Laws and Governance Committee, ICSI as well as CS Mahesh Athavale, CS Ashok Tyagi, CS Shaileshri Bhaskar, CS V Sreedharan, CS Vijay Sharma, CS Divesh Goyal, Practising Company Secretaries for their inputs and guidance in reviewing the publication.

I also acknowledge the suggestions given by the Members of the Auditing Standards Boards in further strengthening the contents of this publication.

I am confident that the publication will prove to be of immense benefit to companies and professionals.

In any publication, there is always scope for further improvement. I would personally be grateful to users and readers for offering their suggestions/ comments for further refinement.

Place: New Delhi

CS Mamta Binani

Date: 5th August, 2016

President

The Institute of Company Secretaries of India

PREFACE TO THE SECOND EDITION

Governments, financial institutions, banks and companies all have realized that the corporate compliant regime lies not in the adequacy of legislations but in its implementation and compliance. Enactment of various laws is not enough and the desired results cannot be achieved unless their implementation is geared up.

The frauds and scams, which have been detrimental not only to growth of financial market but have been a set back to the economy as a whole, have occurred in the past despite and inspite of having plethora of legislations.

Realising the need to ensure compliance of laws in letter and spirit on continuous basis by an independent professional, the Companies Act, 2013 mandated the carrying out of secretarial audit for bigger companies.

The multiplicity of laws, rules, regulations, etc. has necessitated introduction of a secretarial audit to ensure compliances of laws applicable to a company. This has a two-fold objective:

(a) Firstly, to protect the interests of all the stakeholders;

(b) Secondly, to have effective compliance system and governance process.

Secretarial Audit is a mechanism which gives necessary comfort to the management, regulators and the stakeholders, as to the compliance by the company of applicable laws and the existence of proper and adequate systems and processes.

The Legislature has entrusted company secretaries in practice with this responsibility of conducting secretarial audit. The powers and duties of auditors is mutatis mutandis applicable to the company secretary in practice conducting secretarial audit.

This Guidance note (Revised edition) highlights the meaning, benefits, process, approach and scope of Secretarial audit, and professional responsibility for incorrect audit report. This guidance note also provides checklists with respect to five mandatory laws as specified in Form MR-3. It also has a chapter on Secretarial standards, board processes and specimen Secretarial Audit Report.

I am confident that this publication will prove to be of immense practical value to professionals while carrying out the secretarial audit.

I commend the dedicated efforts put in by the ICSI team led by CS Alka Kapoor, Joint Secretary and comprising CS Banu Dandona, CS Lakshmi Arun, Deputy Directors, CS Deepa Khatri, Assistant Director, Mr. Chittaranjan Pal, CS Khusbu Mohanty and CS Disha Kant, Assistant Education Officers under the overall guidance of CS Sutanu Sinha, Officiating Secretary & Chief Executive, ICSI and the guidance and leadership of CS Vineet Chaudhary, Central Council Member and Chairman, Corporate Laws and Governance Committee.

I place on record my sincere thanks to; CS Mahesh Athavale, Past President ICSI; CS Pavan Kumar Vijay, Past President, ICSI; CS V Sreedharan, Past Council Member, ICSI; CS Ahalada

Rao, Council Member; CS Ashish Garg, Council Member; Mr. V K Aggarwal, Former Principal Director; CS Henry Richard, Retd. Regional Director, South Eastern Region, Ministry of Corporate Affairs and Mr. Vinay Sanduja, Senior Associate, Dua Associates (Advocates & Solicitors) for their valuable inputs.

In any publication, there is always scope for further improvement. I would personally be grateful to users and readers for offering their suggestions/comments for further refinement.

Date : 27-03-2015

CS Atul Mehta

Place: New Delhi

President

The Institute of Company Secretaries of India

PREFACE TO THE FIRST EDITION

The companies are the engines of modern economy. They drive the economy and in the process, they are also socially responsible, since they draw resources from the society for their sustenance. Keeping in tune with the changing global business scenario with complex business operations and investment pattern coupled with increasing class of sophisticated stakeholders, the newly enacted Companies Act, 2013 seeks to 'raise the bar on governance' in a comprehensive form with relevant themes such as investor protection, fraud mitigation, inclusive agenda, reporting framework, corporate social responsibility with self regulation and compliances.

Thus, the new law endeavour to balance the public interests with the private interests - promotes and rewards private initiative while safeguarding the interests of the public, society, economy, environment, etc. It also seeks to balance the limited liability of shareholders with the unlimited liability of the company as well as the interests of the present with that of the future, so as to ensure perpetuity to serve the posterity with higher and higher prosperity through corporate democratic principles. This delicate and complex web of balancing requires a regime of compliance and governance.

2. The secretarial audit is a tool to ensure compliances of all applicable laws to the company and thereby ensures certain vital compliances which are relevant from the perspective of Corporate Governance. This audit has genesis in India in the 21st Report of the Standing Committee on Finance (SCF) submitted in August 2010. The Ministry of Corporate Affairs then submitted to the Committee as under:

"Secretarial Audit gives a necessary comfort to the investors that the affairs of the company are being conducted in accordance with the legal requirements and also protects the companies from the consequences of noncompliance of the provisions of the Companies Act and other important corporate laws. It is, accordingly, felt and suggested that the Bill may provide for requirement of conduct of secretarial audit by at least bigger companies by a company secretary in practice."

Based on this submission, among others, the SCF recommended:

"Keeping in view its significance for ensuring procedural compliance by companies, particularly with regard to various statutory disclosures and to ensure adherence to prescribed secretarial standards, the Committee recommend that Secretarial Audit Report may be required to be attached with financial statements by companies exceeding certain threshold limit of paid up share capital."

In tune with this recommendation, the Ministry proposed to the SCF that it would include a new clause in the Bill as under:

"Every company having a paid up share capital of rupees five crore or more or such other amount as may be prescribed by Central Government from time to time shall annex with its Board's Report made in terms of sub-section (3) of section 120 of the Act, a Secretarial Audit Report given by a company secretary in practice in such form as may be prescribed."

3. Based on this understanding, the section 204 of the Companies Act, 2013 now provides as

under:

“Secretarial audit for bigger companies 204. (1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board’s report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such forms may be prescribed.”

The Board of Directors of the listed companies and other prescribed companies are required not only to annex the secretarial report to the Board’s report, but also to explain in full any qualification or observation or other remarks made in the Secretarial Audit Report. In exercise of its powers under section 204(1), the Government has notified the format of secretarial audit report in the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

4. Secretarial Audit is basically an audit of compliances of applicable laws as is evident from the format of the report notified in the Rules. Its scope extends to compliances under the Companies Act, 2013, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996, the Foreign Exchange (Management) Act, 1999 (to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings), the Securities and Exchange Board of India Act, 1992 and rules and regulations made thereunder and all other laws as may be applicable to the company. This gives the necessary comfort to the Government, Regulators, Board and Key Managerial Personnel of companies, the investors and other stakeholders that the affairs of the company are being conducted in accordance with the legal requirements and also protects the companies from the consequences of noncompliance with the provisions of the Companies Act and other important corporate laws. This also keeps potential fraudsters away from the companies.

5. Keeping the requirement of secretarial audit in the dynamic business environment, the Institute has brought out this guidance note to familiarise the members of the complexities and nuances of secretarial audit and to prepare them to accomplish the task to the utmost satisfaction of all stakeholders. This guidance note provides a step by step approach to secretarial audit and its methods.

6. I place on record my sincere thanks to my colleagues on the Central Council and particularly CS Sanjay Grover, Chairman, Corporate Laws and Governance Committee and CS Anil Murarka, Chairman, Practising Company Secretaries Committee and other members of these Committees for their invaluable contribution for finalizing this guidance note. I also take this opportunity to place on record my sincere thanks to the CS Mahesh A. Athavale, Past President and Practising Company Secretary and CS V. Sreedharan, Past Council Member and Practising Company Secretary, who have worked assiduously in giving the final shape to this guidance note.

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

Place: New Delhi

R. Sridharan

Date: May 3, 2014

President

The Institute of Company Secretaries of India

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SECRETARIAL AUDIT

Genesis of Secretarial Audit

The Corporate sector in India is governed by various Acts and the rules, regulations made thereunder and every mode of business has to abide by plethora of applicable laws, rules, procedures, regulations and the internal regulatory framework.

Under most of the laws, the persons who are responsible for compliance and liable for punishment for non-compliances are Key Managerial Personnel which include Managing director, Whole time directors, the Company Secretary, Chief Financial Officer, Manager and officers who have been designated to ensure compliances of applicable laws, rules and regulations on a company.

Under the Companies Act, 2013, a Company Secretary, along with other Key Managerial Personnel and Whole time Directors may be treated as 'officer who is in default' and will be liable for penal consequences for non-compliance, while under most of the other laws, persons in charge of and responsible for the conduct of business of the company are held responsible.

Role of company secretaries have increased manifold under the Companies Act, 2013. Not only under the Companies Act, 2013 but also under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI LODR], SEBI (Prohibition of Insider Trading) Regulations, 2015 and other Regulations, the regulators have expressed faith on the profession of Company Secretary for furtherance of better control and development of the good governance in the Corporate Sector in India.

The term "Secretarial Audit" is a mechanism which is connected with the audit of the non-financial aspects of the company. It gives necessary comfort to the management, regulators and the stakeholders, as to the compliance by the company of applicable laws and the existence of proper and adequate systems and processes in the company.

Every Company, while pursuing its business activities, has to comply with the rules and regulations relating to the Companies Act, Securities laws, FEMA, Industry Specific laws and General laws like Labour laws, Competition law and Environmental and Pollution related laws and should also pursue the good governance practices

Secretarial Audit covers non-financial aspects of the business impact on the performance of the company and verifies compliances of applicable laws, regulations and guidelines. Nonetheless, this exercise will enhance the capabilities of the management and also mitigates business & reputation risk to a great extent. It also evaluates the manner in which the affairs of a company are conducted to a great extent.

The Secretarial Audit postulates for an independent verification of the records, books, papers and documents by a Company Secretary to check the compliance status of the company according to the provisions of various statutes, laws and rules & regulations and also to ensure the compliance of legal and procedural requirements and processes followed by the company.

Secretarial Audit is, therefore, an independent and objective assurance intended to add value and

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improve operations of a company. It helps to accomplish the organisation's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

Recommendation by Parliamentary Standing Committee on Finance (Year 2009)

Report of Parliamentary Standing Committee on Finance

Twenty- first report of Standing Committee on Finance on the Companies Bill, 2009 in the year 2009-2010 recommended Secretarial Audit in listed and bigger companies. The extracts from the Report are as follows:

- “Para 7.8: *****Secretarial Audit may also be mandated for bigger companies, including all listed companies; as it inter-alia provides necessary assurance to the investors that the affairs of the Company are being conducted in accordance with the legal requirements;
- Para 10.53: Keeping in view its significance for ensuring procedural compliance by companies, particularly with regard to various statutory disclosures and to ensure adherence to prescribed secretarial standards, the Committee recommend that Secretarial Audit report may be required to be attached with financial statements by companies exceeding certain threshold limit of paid- up share capital.
- Para 13.33: In accordance with the suggestions made by the Committee to include secretarial audit for bigger companies, delineation of functions and role of chief financial officer and company secretary, the Ministry have proposed to include three new sub-clauses 178A, 178B and 178C in clause 178. Clause 178A, which deals with Secretarial Audit is given below:
 - New sub-clause 178A- Provisions to be included in the Bill to mandate Secretarial audit for bigger companies New Clause 178A-
 - (1) Every company having a paid up share capital of rupees five crore or more or such other amount as may be prescribed by Central Government from time to time shall annex with its Board's Report made in terms of sub- section (3) of section 120 of the Act, a Secretarial Audit Report given by a company secretary in practice in such form as may be prescribed.
 - (2) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice for auditing the secretarial and other records of the company.
 - (3) The Board of Directors, in their Report made in terms of sub-section (3) of section 120 of the Act, shall explain in full any qualification or observation or other remarks made by company secretary in practice in his report under sub-section(1).
 - (4) Where any default is made in complying with the provisions of this section, –
 - (a) the company and every officer who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees;
 - (b) the company secretary in practice who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees”.

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The section further provides that Secretarial Audit Report is to be submitted in a format prescribed under the rules. As per sub-rule (2) of rule 9, the format of the Secretarial Audit Report shall be in Form No. MR.3.

Applicability of Secretarial Audit

Section 204(1) of the Companies Act, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that

1. every listed company;
2. every public company having a paid-up share capital of fifty crore rupees or more; or
3. every public company having a turnover of two hundred fifty crore rupees or more

shall annex with its Board's Report made in terms of sub-section (3) of section 134, a Secretarial Audit Report, given by a Company Secretary in practice, in such form as may be prescribed.

Ascertainment as to whether the Secretarial Audit is applicable on a particular company or not has to be made by checking below mentioned parameters:

- (i) Status of a Company – Public or private;
- (ii) Whether the securities of the company have been listed;
- (iii) Whether the company is subsidiary or associate company of a listed company;
- (iv) Turnover of the company.

The term 'Turnover' has been defined in section 2(91) and amended under the Companies (Amendment) Act, 2017 (effective from 09.02.2018 to mean the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year.

Earlier the term "Turnover" was defined as "the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year". [from 12.09.2013 upto 08.02.2018]

In view of considering the turnover/paid up share capital as per latest audited financial statement, as has been provided in section 149 regarding the appointment of women director/ independent director, the thresholds specified in section 204 shall be required to be checked through out the year. Therefore the secretarial audit report shall be required to be annexed with the Board report:

- (i) if any time during the year (in respect of which board report is prepared) any security of the company has remained listed on any recognised stock exchange; or
- (ii) if any time during the year (in respect of which board report is prepared) the company been a public limited company, having turnover of Rs. 250 crores or more or having paid up share capital of Rs. 50 crores or more.

Applicability of Section 204 to a Private Company which is a subsidiary of a Public Company

Section 2(71) of the Companies Act, 2013 defines a "Public Company" as a company which

- (a) is not a private company; and

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(b) has a minimum paid-up share capital as may be prescribed.

The proviso to the definition states that “Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.”

In view of this, it is clear that Section 204 is applicable to a private company which is a subsidiary of a public company, and which falls under the prescribed class of companies.

Although, the companies which are not covered under section 204 may opt for conducting Secretarial Audit voluntarily as it provides an independent assurance of the compliances of applicable laws by the company.

The section further provides that Secretarial Audit Report is to be submitted in a format prescribed under the rules. As per sub-rule (2) of rule 9, the format of the Secretarial Audit Report shall be in Form No. MR-3 which shall be issued by a Company Secretary in Practice (**Annexure A**).

With the Notification of SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018, the Secretarial Audit is mandatory for listed entities and their material unlisted subsidiaries incorporated in India and shall be annexed with the Annual Report of the company.

Purpose of Secretarial Audit

Secretarial Audit provides an effective mechanism to ensure that compliance of various legislations and regulations including the Companies Act, SEBI Law, Secretarial Standards and other corporate and economic laws applicable to the company has been diligently done. This would give necessary comfort to the Management, Regulators, and the stakeholders.

The periodical Secretarial Audit helps to detect the instances of non-compliances and facilitates taking corrective-measures well in time to avoid any further risk.

Secretarial Audit facilitates monitoring compliances with the requirements of law through a formal compliance management programme which can produce positive results to the stakeholders of a company:

- Companies that go the extra mile with their compliance programs lay the foundation for good governance.
- Companies with an effective compliance management programme have lesser chance of receiving penalties, both monetary and by way of imprisonment.
- Companies that imbibe business and personal ethics and an effective compliance management programme within their work culture often enjoy employee and customer loyalty and public respect for their brand, which can translate into better market capitalization and shareholder returns.
- Recognition for the company as a good corporate citizen.

Benefits of a Secretarial Audit

A secretarial non-compliance, a legal suit or other legal, ethical and governance problems can give rise to catastrophic effects on the continuing viability of the company. The Statute prescribes mandatory Secretarial Audits of bigger companies to provide necessary comfort to the

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Stakeholders. Many companies voluntarily conduct Secretarial Audit to minimize the possibility of various issues which may disrupt their companies' progress.

The Secretarial Audit lays the groundwork for the establishment of an ongoing Secretarial and Legal compliances and a prevention program to ensure the company's goals, structure and ongoing operations are consistent with the latest developments in business and the law governing the Corporate Entities.

A comprehensive Secretarial Audit would examine a wide range of issues which may be as mundane as whether or not the company is qualified to do business in various jurisdictions or as complex as an analysis of the company's Board Compliances in order to ensure consistency with current requirement under the Companies Act, 2013 and the all the events/ Corporate action occurred during the year are in compliance with the Companies Act, 2013. The topics for audit would include choice and structure of the entity; the decisions of the board of directors and documentation (or lack thereof) relating to those decisions; observance of the Secretarial Standards and Board processes, protection of intellectual property; forms and methods of maintaining records, pending and threatened litigation, insurance coverage; listing under securities laws and compliance, and related trade regulations; labour laws, environmental laws; and a review of compliance of all industry specific laws such as laws relating to say, cement sector, fertilizer sector, sugar sector and so on.

Naturally, the extent and complexity of the Secretarial Audit would vary depending on the size of the company in terms of the horizontal and vertical scales i.e. size of business, area of operations, turnover, product line, age of the company and type of businesses, such as trading, services, Manufacturing, the number of shareholders and employees, the extent to which the company does business as a "regulated industry," and a host of other factors.

A dispensation with such an independent secretarial audit could well lead to significant problems for the company and its stakeholders. The risks of non-compliance with these many laws and regulations include:

- Failure to keep proper books and records or non-compliance with the provisions of corporate laws and securities laws, executing certain unviable or undesirable corporate actions or transactions with related parties or loan to directors, issue, allotment and transfer of Security or otherwise, without proper authority of the Board of Directors or the General Meeting or the Memorandum of Association, etc., could lead to the ability by third parties to play with the stakeholder's limited liability protection.
- Failure to obtain proper approvals/permissions/licenses could lead to fines, penalties or/and imprisonment in some cases, even closure of the business by government or governmental agencies.
- Failure to comply with certain laws and regulations may lead to initiation of action by the regulators like MCA, SEBI, RBI or others which may jeopardize the very stability of the financial and manufacturing operations.
- Failure to adopt proper environment law compliance and policies which are reviewed periodically could give rise to governmental and civil liability.
- Failure to keep accurate records and minutes of its decision-making procedures, such as proving that directors are exercising informed judgment, could subject the company and its

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board to liability to its shareholders and investors.

- Failure to monitor the company's reporting requirements may put the company into default with lenders or investors.
- Company Secretary in Practice acts as an extended arm of the regulators in ensuring the compliances, Detecting and reporting any non-compliance before it takes seriously alarming shape.

Other benefits to the Stakeholders are:

(a) Promoters

Secretarial Audit assures the promoters of a company that those in-charge of its management are conducting its affairs in accordance with the requirements of laws and the owners stake is not being exposed to unintended risks.

(b) Non-executive/Independent directors

Secretarial Audit provides comfort to the Non-executive/Independent Directors that appropriate mechanisms and processes are in place to ensure compliance with laws applicable to the company, thus mitigating any risk from a regulatory or governance perspective.

(c) Government authorities/regulators

It also facilitates reducing the burden of the regulators in ensuring compliances and they can take timely actions against the offenders.

(d) Investors

Secretarial Audit helps the investors in taking informed investment decision, as it evaluates the company in terms of compliance and governance norms being followed by the company.

(e) Other Stakeholders

It is an effective due diligence exercise for the prospective investors or joint venture partners. Further Financial Institutions, Banks, Creditors and Consumers can measure the law abiding nature of company management.

Secretarial Audit Report and Company Secretary in Practice

Section 204 provides that Secretarial Audit Report is to be submitted in a format prescribed under the rules. As per sub-rule (2) of rule 9, the format of the Secretarial Audit Report shall be in Form No. MR-3 which shall be issued by a Company Secretary in Practice only.

In order to provide guidance to its members who are in practice to adopt a robust and efficient process of Secretarial Audit, the Institute of Company Secretaries of India has issued this guidance note. Further, to facilitate the members of ICSI, the Institute through an agency has developed a tool for facilitating conduct of Secretarial Audit. The nomenclature of the tool is Compliance Management and Auditing Configurator (CMAC).

The CMAC has illustrative checklists for around 35 Industry Verticals and 50 Industry sub-verticals. The detailed checklist of laws covering the Central and State Acts can be downloaded in editable MS- Excel Format. This tool is available at ICSI website which is available free to use.

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The link of the tool is [http:// 49.50.79.97/CMAC/loginPage.aspx](http://49.50.79.97/CMAC/loginPage.aspx)

The detailed procedure including video tutorial for use of this tool is available at the home page of the tool.

Appointment of Secretarial Auditor

In terms of section 204(1), only a member of the Institute of Company Secretaries of India holding certificate of practice (company secretary in practice) can conduct Secretarial Audit and furnish the Secretarial Audit Report to the company.

As per rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014, secretarial auditor is required to be appointed by means of resolution at a duly convened meeting of the Board of Directors of the company.

Time of Appointment

It is advisable that the Secretarial Auditor is appointed at beginning of the financial year as secretarial audit entails checking of compliances on a continuous basis. As a good practice, the Secretarial Auditor should submit a report to the Board at the end of each quarter as to the compliances of the company.

ICSI Auditing Standards

ICSI has constituted the Auditing Standards Board to lay down the principles for evaluation of statutory compliances and corporate conduct in relation to secretarial audit and to inculcate best auditing practices amongst the members of ICSI.

Upon issuance of these Standards by ICSI, it would become generally accepted principle relating to the secretarial practices to be followed while conducting secretarial audit by a practicing member and developing a unified manner for Reporting by the auditors.

Secretarial Auditor's right to receive Notice of Annual General Meeting

Para 1.2.1 of Secretarial Standard on General Meetings requires that the notice in writing of every Meeting shall be given to every Member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.

Powers and duties of Secretarial Auditor under the Companies Act, 2013

Section 143 of the Companies Act, 2013 deals with powers and duties of Auditors. Sub-section(14) of section 143 provides that the provisions of this section shall *mutatis mutandis* apply to the Company Secretary in Practice conducting Secretarial Audit under section 204.

Company to provide all necessary information and assistance for conducting Secretarial Audit

Section 204(2) of the Companies Act, 2013 provides that it is the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

Approach to Conduct Secretarial Audit

The object of the Secretarial Audit is evaluation and form an opinion and to report to the shareholders as to whether, the company has complied with the applicable laws comprising

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various statutes, rules, regulations, guidelines, followed the board processes and to also report on the existence of compliance management system.

This requires knowledge of the corporate laws, securities laws, economic laws, FEMA, other laws specifically applicable to the company, corporate governance provisions, Secretarial Standards, SEBI (LODR) Regulations, etc. To be able to give an effective report, a Company Secretary in Practice is expected to have the following:

(1) **Knowledge:** While conducting the Audit, the Secretarial Auditor should have the knowledge of exact nature and activities of the company and the laws which are applicable to the company. He should have understanding to judge existence of compliance system, Board processes & procedures and practical knowledge for implementation of secretarial standards etc.

(2) **Team:** The Secretarial Auditor is required to ensure that his team is appropriately trained, who can support the preparation of the report. Most importantly they should be informed of the basic principles of audit and have good ethical values. It is also important that the team should be regularly updated with the related legislative and administrative updates to build and maintain the expertise.

(3) **Documentation & backup:** He is expected to develop a customized checklists, according to the requirements of the company, which will help in, evaluation process and forming of Opinion. He is required to keep proper record of documents checked, evidence gathered during the course of audit.

(4) **Third party support and evidences:** It would always be helpful to cross verification of the filing made by the company at MCA, SEBI & other authorities independently. Verification of record and enquiries can also be made with the other statutory and internal auditors and consultants and Independent Directors of the Company.

(5) **Adhering to the timelines:** Adhering the time lines and schedule set to conduct the audit process will not only gain the confidence of the client but also provide a room to management to rectify defaults in time and this will also boost the morale and increase the efficiency level of the team.

(6) **Honesty and impartiality:** A Company Secretary in Practice has the professional duty to provide an unbiased view on the compliance status of the Company. A Company Secretary in Practice should be independent from the company being audited.

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

(7) **Maintaining Audit Diary:** The Audit exercise needs to be planned and executed professionally and verifications done by the team members should be recorded daily. Such maintenance of diary would help in keeping audit trail that would come in handy to ensure the quality of audit.

(8) **Back up papers to be maintained:** The Secretarial Auditor should maintain Audit Diary and back up papers like working papers, supporting documents, observations, management explanations, basis for his conclusions more particularly for qualifications in the report etc. as these will provide the audit evidence for defending himself in any possible allegation of misconduct so also peer review and help in defending himself in case of any enquiry or questions from regulators.

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

Scope of Secretarial Audit

In terms of Form MR-3, the Secretarial auditor needs to examine and report the compliance of the following five specific laws:

- (i) The Companies Act, 2013 (the Act) and the rules made thereunder;
- (ii) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder;
- (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
- (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
- (v) The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-
 - (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
 - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992/ SEBI (Prohibition of Insider Trading) Regulations, 2015;
 - (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999/ SEBI (Share Based Employee Benefits) Regulations, 2014;
 - (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
 - (f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
 - (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
 - (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
 - (i) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

In addition, the form MR-3, point (vi) also refers to 'Other laws as may be applicable specifically to the company.'

It may be noted that the scope of MR- 3 includes 'The Securities and Exchange Board of India (Listing obligations and Disclosures requirements) Regulations, 2015'.

'Other areas' which need to be checked

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Secretarial Auditor needs to examine and report on the compliance with the applicable clauses of the following:

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

Secretarial Audit report also requires reporting on whether –

- The Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors, Independent Directors, and Women Director.
- The changes in the composition of the Board of Directors that took place during the period under review were carried out in compliance with the provisions of the Act.
- Adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance, and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.
- Majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.
- There are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with all applicable laws including general rules like labour laws, competition law, Environmental laws, regulations and guidelines.

Secretarial Auditor is required to report and provide details of specific events and actions that occurred during the reporting period having major bearing on the affairs of the company in pursuance of above referred laws/ rules & regulations.

Scope of Secretarial Audit as decided by the Council of ICSI

1. As per ICSI communication dated 22nd December, 2014

Consultation meets were held with the Corporates (through Company Secretaries in employment) as well as Company Secretaries in practice, and taking into consideration the views emerging therefore, the Council of the ICSI at its 226th meeting held on November 21, 2014 decided on the Scope of Secretarial Audit includes:

- Reporting on compliance of Five laws as mentioned in form MR-3
 - Companies Act, 2013,
 - Securities Contracts (Regulation) Act, 1956 ('SCRA'),
 - Depositories Act, 1996,
 - Foreign Exchange Management Act, 1999 to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowing,
 - Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 as specified in MR-3.

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- Reporting on compliance of ‘Other laws as may be applicable specifically to the company’ shall mean all the laws which are applicable to specific Company for example for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry; likewise for a company in petroleum sector- all laws applicable to petroleum industry; similarly for companies in pharmaceutical sector, cement industry etc.
- Examining and reporting whether the adequate systems and processes are in place to monitor and ensure compliance with general laws like labour laws, competition law, and environmental laws.

The provisions relating to audit of accounts and financial statement of a company is dealt in the Statutory Audit, and that relating to taxation is dealt in Tax Audit, the Secretarial Auditor may rely on the reports given by statutory auditors or other designated professionals.

2. As per communication dated 15th May, 2015

“Secretarial Audit has become applicable to listed companies & all other specified companies, from the financial year 2014-2015.

Based on extensive consultations with the stakeholders, the then Council at its 226th meeting held on November 21, 2014 had laid the scope of Secretarial Audit.

In consonance with the scope in MR-3 it is being re-stated as under:

<i>Examination & Specific Reporting on Compliance under:</i>	<i>Examination & Specific reporting on Compliance of other laws as may be applicable specifically to the company</i>	<i>Further Reporting</i>	<i>Further Reporting</i>
(i) Companies Act, 2013 and the Rules made thereunder (ii) Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder (iii) Depositories Act, 1996 and the Regulations & Bye-laws framed thereunder	<ul style="list-style-type: none"> • eg. Banks – all laws applicable to banking Industry Companies in petroleum sector – all laws applicable to petroleum industry 	Whether there are Adequate systems and processes in the company Commensurate with its size & operation to monitor and ensure compliance with applicable laws including general laws like labour laws, competition law, environmental laws.	a. Board of Directors Constitution b. Notices, Agenda and Minutes of Board Meetings etc. c. Board-processes

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<p>(iv) Foreign Exchange competition law, Management Act, 1999 and environmental the rules made thereunder to the extent of foreign direct Investment, Overseas Direct Investments and External Commercial Borrowings</p> <p>(v) Regulations and Guidelines under the Securities and Exchange Board of India Act, 1992 as enlisted in MR-3</p> <p>(vi) Secretarial Standards (not applicable to Secretarial Audit Report for Financial Year 2014 15)</p> <p>(vii) Listing Agreement entered into by the company with Stock Exchange(s) if any</p>			
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Reporting of Fraud

Secretarial Auditor in the course of performance of his duties as auditor it has reason to believe that an offence involving fraud is being committed or has been committed against the Company by its officers/employees needs to report the fraud. [Pursuant to the provision of section 143 (12 & 14) read with section 447].

General Principles/Guidelines while conducting Secretarial Audit

Audit is an intelligent exercise and it requires examination of the books and records of business done by an independent qualified person. It is done by process of verification of documents, record, returns, registers, filings, information systems, procedures and explanations received from the auditee.

The Auditor should not have any substantial conflict of interest with the Auditee. Any conflict of interest, other than substantial conflict of interest, should be disclosed by the Auditor before accepting the Audit Engagement or as soon as the Auditor becomes aware of the same.

Generally the conflict of interest can be ascertained by the following parameters:

- Ownership
- Financial Interest

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- Past Employment Relationship

The Audit scope determines the intensity of the audit and the size of business operation is an key factor for calculating the time required for an audit exercise, depth of auditing, aspects to be covered etc. Audit scope depends on, relevant legal provisions, nature of audit, objectives of audit & terms of engagement. However, the terms of engagement cannot, restrict the scope of an audit in relation to matters which are prescribed by legislation.

Before taking up/ commencing the Audit Assignment, the Auditor should document the following:

- a. The objective and scope of the audit;
- b. The responsibilities of the Auditor and the Auditee, The responsibilities of the Management;
- c. Written representations provided/ to be provided by the Management to the Auditor, including particulars of the Predecessor or Previous Auditor;
- d. The period within which (with milestones) the audit report shall be submitted by the Auditor;
- e. The commercial terms regarding audit fees and reimbursement of out of pocket expenses in connection with the audit; and
- g. Limitations of audit, if any.

Minimum fees to be charged with respect to conduct of Secretarial Audit

There is no minimum fees prescribed by ICSI for conducting Secretarial Audit by Company Secretary in practice. However, it would be in the fitness of things that Company Secretary in practice takes proper call about fees considering the nature & size of the company, type of company and the efforts required to be put in while carrying out Secretarial Audit. It is expected that member should maintain high standard and quality in audit process and issue of the Secretarial Audit Report.

Limits for the issue of Secretarial Audit Reports:

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

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

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

Process of Secretarial Audit

Secretarial Audit is a process to check compliance with the provisions of all laws/ rules/ regulations/standards/procedures applicable to the company including laws/ rules/ regulations/standards/procedures specifically applicable to the company and; adherence to good governance practices with regard to the systems and processes of seeking and obtaining approvals of the Board and/or shareholders, as may be necessary, for the business and other activities of the company, carrying out activities in a lawful manner and the maintenance of minutes and records relating to such approvals or decisions and implementation.

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The Secretarial Auditor also expresses an opinion as to whether there exist adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

Intimation to earlier Incumbent

Whenever a practicing company secretary is appointed as Secretarial Auditor in place of the existing Secretarial Auditor, he/she should intimate the appointment to the earlier incumbent in writing, in view of the provisions of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 and the relevant pronounced judgments.

Acceptance of Appointment

A formal letter for appointment should be issued by the company to the secretarial auditor along with the copy of the board resolution for appointment. The secretarial auditor shall confirm acceptance of appointment in writing.

Preliminary Discussions/Surveys

It is important to have relevant information about the company. The secretarial auditor is expected to take an overview of the operations of the company and interact with the personnel involved to know about the nature of the business. He may opt for surveys for generating information about the company.

Preliminary Meeting

The preliminary meeting with the senior management and the staff involved in the audit will give a fair idea of what is the business and operations of the company and the manner in which audit activities are to be undertaken. At this stage a time frame of the secretarial audit should be determined and finalized. The secretarial auditor shall discuss the scope and objectives of the audit, gather information on important Board processes, evaluate existing control systems and prepare the audit plan.

Secretarial Standard - 1 i.e. Secretarial Standard on Meetings of Board of Directors also provides the 'list of laws applicable specifically to the company' as one of the illustrative items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting

Finalization of Audit Plan and Briefing the Staff

It is important to work out an audit plan.

As a part of Audit plan, the Secretarial Auditor is expected to undertake the following :

- a. Identification of broad audit areas;
- b. References made by the previous audit findings and observations from the Management and the Predecessor or Previous Auditor, in case of change of Auditor;
- c. Determination of subject matters/audit areas requiring special attention, when considered necessary;
- d. Risk Assessment and Materiality;
- e. Auditing techniques to be used;
- f. Allocation of audit resources for the audit to be undertaken; and

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g. Preparation of audit schedule

The audit should be organized to cover adequately all aspects of the enterprise as far as they are relevant to the audit objectives. Appropriate verification has to be done with the help of Checklists.

The plan also involves briefing the audit staff as to allotment of work, fieldwork responsibilities and other roles. The audit plan should comprehensively outline the fieldwork and usage of auditing tools. The review of controls helps the auditor determine the areas of highest risk and design tests to be performed in the fieldwork section. It is essential that the audit plan adheres to the timelines. Detailed checklist for each aspect of secretarial audit should be prepared and audit staff should be properly sensitized before commencement of audit.

Testing, Interviews and Analysis

The secretarial auditor may use a variety of tools and techniques to gather information about the company's operations.

It is a well established principle in any auditing practice that an auditor is not expected to carry out a 100% checking of every piece of paper and information available in the company, in verifying the final facts and figures represented in the end document. In financial audit, for instance, the auditor is not expected to make a thorough scrutiny of each and every invoice raised / voucher created by the company before accepting the sales figure given in the Balance Sheet.

The following are general techniques of auditing:

- (A) sample checking;
- (B) test checking;
- (C) random checking;
- (D) trial and error checking.

The same techniques may be applied and adopted in some of the areas of secretarial audit. For instance...while verifying the list of past and present shareholders, a company secretary in practice cannot be expected to check every folio of the Register of Members, whose number could run into lakhs. Similarly, the number of share transfers registered in a year could run into thousands. If one is expected to check every transaction in these matters, it could be well almost impossible to meet the statutory time limits for completing the audit assignment.

Therefore, certain techniques of sample checking and test checking should be applied while conducting secretarial audit.

The Guiding principles can be adopted while deciding about the extent of checking that is required based on size of company, nature of industry, number of transactions and other relevant factors. The following guiding principles be adopted while deciding about the extent of checking that is required.

- (i) The need for every detailed checking is greatly reduced if there are adequate measures of internal control and checks and balances built into the systems and procedures of the organization. For instance, the procedure for registration of share transfers could be so designed that the mistakes and errors committed at one stage are automatically detected and corrected by another, before the whole process is complete. The system could also provide for automatic cross verification - particularly in cases where the process is

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computerized.

- (ii) The principle of materiality is another important concept. The sample chosen for detailed checking should be representative of the whole, or the 'population', in statistical parlance.
- (iii) For example, in the case of share transfers, instances of transfer of large blocks of shares could be chosen for detailed scrutiny. Or, the 'busy' period for transfer of shares in the year could be identified and selected for sample checking.
- (iv) 'High risk' areas could be identified and subjected to more extensive scrutiny than others. For instance, in the case of shares on which there are restrictions on transfer-statutory or otherwise, a more extensive examination is warranted.

In conclusion, it may be pointed out that a Secretarial Auditor has to carry out necessary checks to verify the records and compliances connected thereto. While the extent of checking is a matter of personal judgment, he should safeguard himself against any possible charge of negligence in respect of inaccurate or incomplete statements, certified by him. A Company Secretary in Practice is advised to exercise reasonable care & due diligence.

If question arises whether the approach to audit should be full or part or sample basis, then Company Secretary in Practice is advised to always prefer for complete checking if transactions are less and if size of the organization is medium or small. However for bigger organization quality time need to be given throughout the financial year by frequent visits at regular intervals.

Adequate enquiries should be made in respect of matters which are capable of direct verification. Mere getting certification from experts and or Management may defeat the purpose of this audit.

The Auditor should obtain sufficient & appropriate evidences through the verification of compliances and other substantive procedures for drawing reasonable conclusions to form an opinion.

Secretarial auditor should determine whether the controls identified during the preliminary review are operating properly and in the manner described by the Company.

Fieldwork typically consists of interviewing the staff of the company whether formally or informally, reviewing procedure manuals, processes, testing and analysing compliance with applicable policies and procedures and laws, rules, regulations and assessing the adequacy of controls. The secretarial auditor may visit place of business operations/ factory, if necessary, to verify authenticity of documents, records and sign boards

This exercise may result in significant findings which the secretarial auditor may bear in mind while preparing the secretarial audit report.

The Act places the secretarial auditor on the same footing as the statutory auditor in terms of powers, duties and responsibilities while conducting the audit. [Section 143(14)(b)]

Working Papers

Working papers are a vital tool of the audit process. They form the basis for expression of the audit opinion. They connect the management's records and information to the auditor's opinion. They are comprehensive and serve many functions. A sample worksheet is placed at **Annexure 'B'**.

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Management Representation Letter

The Company Secretary in Practice may obtain a management representation letter from the auditee company. The letter may be signed by Company Secretary/Managing Director/ Senior Management who would normally have authority to issue the same. Suggested format of the management representation letter is placed as '**Annexure C**'. The format may be adopted with changes, depending on the circumstances and facts governing every audit. The Secretarial Auditor can use this letter of representation as part of his audit evidence.

A Company Secretary in Practice is advised to exercise all possible care, reasonable skill & due diligence. Adequate enquiries should be made in respect of matters which are capable of direct verification. Mere getting certification from management may defeat the purpose of the audit.

Audit Summary for Discussions

It is recommended that the findings during the course of audit are summarized and presented for initial discussions with the management for their views/ clarifications/replies.

Submission of Secretarial Audit Report

After considering the clarifications/replies of the management, the secretarial auditor shall prepare the secretarial audit report in Form No.MR-3. The report is addressed to the members but is to be submitted to the Board. The report shall contain the opinion on the statutory compliances examined by the auditor and shall state whether in his opinion the Company is carrying out / not carrying out due compliances of the applicable provisions of the various laws. The report shall be provided with or without qualifications. The specimen of 'Qualified Secretarial Audit Report' is provided in separate chapter in the Guidance Note.

Signing

The Secretarial Audit Report should be signed by the secretarial auditor who conducted or under whose supervision the secretarial audit was conducted indicating his FCS/ ACS number along with Certificate of Practice Number issued by the Institute of Company Secretaries of India.

In case of PCS firm, the secretarial audit report may be signed by the partner who conducted or under whose supervision the secretarial audit was conducted indicating his FCS/ACS number alongwith his Certificate of Practice number. The secretarial audit report cannot be signed by an employee of the PCS firm even if he/she may be a member of the ICSI holding Certificate of Practice number.

Reporting with Qualification

1. A qualification, reservation or adverse remarks, if any, should be stated by the Secretarial Auditor at the relevant places in his report in bold type or in italics.
2. If the Secretarial Auditor is unable to express an opinion on any matter, he should mention that he is unable to express an opinion on that matter and the reasons therefor.
3. If the scope of work required to be performed is restricted on account of restrictions imposed by the company or on account of circumstantial limitations (like certain books or papers being in the custody of another person who is not available or a Government Authority), the Report should indicate such limitations.

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4. If such limitations are so material that the Secretarial Auditor is unable to express any opinion, the Secretarial Auditor should state that in the absence of necessary information and records, he is unable to report on compliance(s) relating to such areas by the Company.

Further, the Board of Directors, in its Board's report prepared under section 134(3) of the Companies Act, 2013, shall explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in the Secretarial Audit Report.

Duty to Report Fraud

A very significant duty has been cast on the Company Secretary in Practice under section 143 of the Companies Act, 2013. It provides that if the company secretary in practice, in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving the prescribed amount is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government.

Revised section 143(12) read with the Companies (Audit and Auditors) Amendment Rules, 2015 provides that if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employee, the auditor shall report the matter to the Central Government.

- The auditor shall report the matter to the Central Government as under:-
 - (a) the auditor to report the matter to the Board/ Audit Committee, as the case may be, immediately but not later than 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days;
 - (b) on receipt of such reply, the auditor to forward his report and the reply of the Board/Audit Committee along with his comments to the Central Government within 15 days from the date of receipt of such reply or observations;
 - (c) in case the auditor fails to get any reply or observations from the Board/ Audit Committee within 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;
 - (d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same.
 - (e) the report shall be on the letter head of the auditor containing postal address, email, contact details, seal and signed along with the membership number.
 - (f) the report shall be in the form of a statement as specified in Form ADT-4.

In case of a fraud involving lesser than rupees one crore, the auditor shall report the matter to Audit Committee or to the Board immediately but not later than 2 days of his knowledge of the fraud and he shall report the matter specifying the following:-

- (a) Nature of Fraud with description;
- (b) Approximate amount involved; and

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(c) Parties involved.

The following details of each of the fraud reported to the Audit Committee or the Board during the year to be disclosed in the Board's Report:-

- (a) Nature of Fraud with description;
- (b) Approximate Amount involved;
- (c) Parties involved, if remedial action not taken; and
- (d) Remedial actions taken.

In case, company secretary in practice does not comply with the provisions of section 143(12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

Further, sub-section (13) of section 143 provides that no duty to which an auditor of a company is subject to shall be regarded as having been contravened by reason of his reporting the matter (fraud) if it is done in good faith.

Procedure for reporting of fraud:

Reporting of frauds by auditor involving amount more than Rs. 1 crore

If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

Auditor should report such frauds as soon as possible but not later than 62 days of his knowledge about the frauds:

STEP-I

Report to Board & Audit Committee:

Auditor shall forward his report to the Board of Directors or the Audit Committee, as the case maybe, within 2 days of his knowledge of the fraud, seeking their reply or observations within 45 forty-five days;

STEP-II

Report to Central Government after reply of board:

On receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 fifteen days of receipt of such reply or observations;

STEP-III

Report to Central Government if no reply received

In case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45(forty-five days), he shall forward his report to the Central

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Government alongwith a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.

Other Points to be kept in mind:

- The report shall be on the letter-head of the auditor containing
 - Postal Address,
 - e-mail address and
 - contact number and
 - signed by the auditor with his seal and shall
 - indicate his Membership Number.
 - Report shall be in the form of a statement as specified in Form ADT-4.

Reporting of frauds by auditor involving amount less than Rs. 1 crore

- Sub-rule (3) of revised Rule 13 of the Companies (Audit and Auditors) Rules, 2014 Provides that in case of fraud involving an amount less than Rs. 1 Crore, the auditor shall report the matter of fraud to the Audit Committee or to the Board within 2 days of his knowledge of the fraud.
- The report should specify the nature of the fraud with description, approximate amount of the fraud and parties involved in the fraud.
- In such case, as per Sub-rule (4), the Board shall disclose in its report (Board's Report) the nature of fraud with description, approximate amount of the fraud, parties involved in the fraud and remedial action taken.
- Name of parties should be disclosed only when the Board or Audit Committee has not taken any remedial action against the fraud.

Fraud detection and reporting requires the Practicing Company Secretary to focus beyond compliance. The Delhi High court observed in the matter of Globe Motors Limited v. Mehta Teja Singh & Company that although an agreement in which a director was interested could not said to be invalid in view of compliance with the requirements of the Act, yet it is only a formal aspect of compliance with the statutory provisions; the basic question is as to the conduct of the director and whether it satisfies the test considering their fiduciary relationship to the company. Justice Sachar further observed that the directors are expected to display utmost good faith towards the company in their dealings with the company or on behalf of the company; they should not use the company's money or other property or information or other matters in their possession in order to gain any advantage to themselves. Therefore a practicing company secretary should not be satisfied only with compliance during secretarial audit. He needs to look beyond and satisfy himself that the transactions which have taken place during audit period do not contain any fraud element.

Clause (f) of Explanation under section 447 of the Companies Act 2013 defines “ Fraud” in relation to affairs of a company or anybody corporate includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any

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manner, with intent to deceive, to gain undue advantage from or to injure the interest of the company or its shareholders or its creditors or any other person whether or not there is any wrongful gain or wrongful loss.

A perusal of the definition brings out the following elements of "Fraud":-

- (a) Any act committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (b) Any omission committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (c) Any concealment of any fact committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (d) Any abuse of position committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (e) Any act committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.
- (f) Any act committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (g) Any omission committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.
- (h) Any omission committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (i) Any concealment of any fact committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.
- (j) Any concealment of any fact committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (k) Any abuse of position committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.
- (l) Any abuse of position committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.

The Practicing Company Secretary has to examine the transactions during the period of audit to

GUIDANCE NOTE ON SECRETARIAL AUDIT

identify whether any fraud element is present in the transaction. In the past “Fraud” has been noticed in many cases of scams in the following kinds of transactions:-

- Related Party Transactions
- Excessive managerial remuneration – Insider Trading
- Inter Company transactions
- Mergers/demergers/acquisitions
- IPO frauds
- Ponzy schemes
- *Public Deposit*
- *Transfer of Shares*

Other means of Corporate fraud are the theft of assets, False expenses, corruption, theft in formation, fraudulent applications, misuse of assets, dishonest business partners, Fraudulent billing these areas are not exhaustive but only some examples are given so as to guide fraud detection.

Professional Responsibility and Penalty for incorrect Secretarial Audit Report

Professional Responsibility under Section 448

Section 448 of Companies Act, 2013 deals with penalty for false statements. The section provides that if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement, –

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

he shall be liable under section 447.

Penalty for incorrect Secretarial Audit Report

Section 447 deals with punishment for fraud which provides that any person who is found to be guilty of fraud, involving an amount of at least ten lakh rupees or one percent. of the turnover if the company which ever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. In case, the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

In case where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.

In view of this, a company secretary in practice will be attracting the penal provisions of section

SECRETARIAL AUDIT

448, for any false statement in any material particular or omission of any material fact in the Secretarial Audit Report. However, a person will be penalised under section 448 in case he makes a statement, which is false in any material particular, knowing it to be false, or which omits any material fact knowing it to be material.

It is pertinent to note that section 448 applies to “any person”. In view of this, a company secretary in practice, who is an independent professional, will be attracting the penalty, as prescribed in section 448 in case his observations in the secretarial audit report turns out to be false or he omits any material fact, knowing it to be false or material.

Section 204 of the Companies Act, 2013

Section 204(4) further provides that if company secretary in practice contravenes the provisions of section 204 in issue of the Secretarial Audit Report in Form MR-3, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Company Secretaries Act, 1980

Besides, the Company Secretary in Practice shall be liable for professional or other misconduct mentioned in First or Second Schedule or in both the Schedules to the Company Secretaries Act, 1980 and where held guilty, be liable for the following actions:

- (i) where found guilty of professional or other misconduct mentioned in the First Schedule:
 - (a) reprimand;
 - (b) removal of name from the Register of members upto a period of three months;
 - (c) fine which may extend to one lakh rupees.
- (ii) where found guilty of professional or other misconduct mentioned in the Second Schedule:
 - (a) reprimand;
 - (b) removal of name from the Register of members permanently or such period as may be thought fit by the Disciplinary Committee;
 - (c) fine which may extend to five lakh rupees.

Functions of Company Secretary in Employment

Section 205 of the Companies Act, 2013 provides that the functions of company secretary (in employment) shall include the following:

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

Significantly, the section provides for reporting about the compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company as a part of the functions of a company secretary.

In addition, the Central Government has prescribed the following additional duties for Company

GUIDANCE NOTE ON SECRETARIAL AUDIT

Secretary (in employment) through rules (10) of the Companies (Appointment and remuneration) Rules, 2014:

- (1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
- (2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
- (3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
- (4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
- (5) to assist the Board in the conduct of the affairs of the company;
- (6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- (7) to discharge such other duties as have been specified under the Act or rules; and
- (8) such other duties as may be assigned by the Board from time to time.

Accordingly, the section read with rules made thereunder provides that company secretary to guide the management of the company for ensuring compliance with provisions of all Act, Rules, Regulations, Standards, policy etc. covered in Form MR-3 and other laws as specifically applicable to the company as a part of the functions of a company secretary.

Steps for preparing for Secretarial Audit: Company's Perspective

A company should prepare itself for secretarial audit by taking the following steps:

1. *Compliance Programme*: It is essential for every company to have a compliance management system in place that is updated from time to time. The compliance management system covers generally aspects such as its objective, list of applicable laws, Compliance requirement, Compliance calendar, compliance risk management framework, establishment of systems and processes for effective compliance, appointment of chief compliance officers, compliance ownership and so on.

Evaluating or Recommending a Compliance programme in the course of Secretarial Audit

Upon the engagement itself, The Secretarial Auditor should have an evaluation of the various aspects which help him in identifying the gaps, if any, in the existing compliance management system in terms of policy, procedure, implementation, compliance risk management, compliance structure, training & Communication, monitoring & control. Based on the evaluation of Compliance management system, recommendations may be made to strengthen the same and performing audit smoothly. The company secretary in practice can also recommend for compliance management system if the company does not have one.

A template of Compliance Management System placed at **Annexure D**.

2. *Team*: Compliance with various laws and legal parameters by the company is essential to avoid unwanted litigations. A company may constitute a team of officers responsible for compliances under different laws.

SECRETARIAL AUDIT

3. *Maintenance of Records* : The entity at all levels should imbibe the practice of maintaining proper records. Concerned employees must be sensitized with the importance of record management system and ensure availability of records for verification.
4. *Preparation of Compliance Chart* : A company may prepare compliance chart under various laws applicable to the company as a checklist. Various charts are readily available but a customized chart suited to the specific requirements of the company may be a better option.
5. *Conduct Compliance Awareness Programmes*: A company may organize compliance awareness programmes at all the organizational levels to sensitize the employees about the requirement and importance of compliance and penalties for non- compliance.

Further section 204 provides that it is the duty of the company to give all assistance and facilities to the company secretary in practice, for conducting the secretarial audit. Hence, it becomes the responsibility of the working directors/company secretary of the company to provide the required information to the Secretarial Auditor to enable him to conduct the Secretarial Audit in a timely and efficient manner.

GUIDANCE NOTE ON SECRETARIAL AUDIT

Annexure A

FORM NO. MR-3

SECRETARIAL AUDIT REPORT

FOR THE FINANCIAL YEAR ENDED

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

To,
The Members,
..... Limited

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

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

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

- (i) The Companies Act, 2013 (the Act) and the rules made thereunder;
- (ii) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder;
- (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
- (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
- (v) The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-
 - (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
 - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
 - (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure

SECRETARIAL AUDIT

Requirements) Regulations, 2009

- (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
 - (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
 - (f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
 - (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
 - (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
- (vi) (Mention the other laws as may be applicable specifically to the company)

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

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

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

Note: Please report specific non compliances / observations / audit qualification, reservation or adverse remarks in respect of the above para wise.

I/we further report that

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

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

Majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.

I/we further report that there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

Note: Please report specific observations / qualification, reservation or adverse remarks in respect of the Board Structures/system and processes relating to the Audit period.

GUIDANCE NOTE ON SECRETARIAL AUDIT

I/we further report that during the audit period the company has.....

(Give details of specific events / actions having a major bearing on the company's affairs in pursuance of the above referred laws, rules, regulations, guidelines, standards, etc. referred to above)

For example:

- (i) Public/Right/Preferential issue of shares / debentures/sweat equity, etc.
- (ii) Redemption / buy-back of securities.
- (iii) Major decisions taken by the members in pursuance to section 180 of the Companies Act, 2013.
- (iv) Merger / amalgamation / reconstruction, etc.
- (v) Foreign technical collaborations.

Place:

Signature:

Date:

Name of Company Secretary in Practice/Firm:

ACS/FCS No.

C P No.:

Note : Parawise details of the Audit finding, if necessary, may be placed as annexure to the report.

SAMPLE WORK SHEET

DETAILS OF CAPITAL STRUCTURE

Particulars	As on 01/04/20	Add: Increase in Capital (if any)	Less: Reduction in Capital (if any)	Date of passing resolution	Capital as on 31/03/20....
Authorised Capital					
Equity					
Preference					
Unclassified					
Issued Capital					
Subscribed Capital					
Paid-up Capital					
Public Issue			Not Applicable		
Rights Issue			Not Applicable		
Bonus Issue			Not Applicable		
Private Placement/ Preferential Allotment (Other than conversion)			Not Applicable		
Private Placement/ Preferential Allotment (arising out of conversion)			Not Applicable		
Allotment of shares pursuant to ESOP			Not Applicable		
Allotment consequent to Scheme of Arrangement/ Merger/Amalgamation etc.				Not Applicable	
Buy-back of Shares			Not Applicable		
Reduction of capital			Not Applicable		
Share Forfeited (if any)					

GUIDANCE NOTE ON SECRETARIAL AUDIT

DETAILS OF DIRECTORS & KMP

(EXISTING AND ANY CHANGE MADE BETWEEN 01/04/20.... TO 31/03/20.....)

Name of Director /KMP	DIN & PAN	Residential Address	Date of Appointment/last re-appointment	Designation	Nature (Independent/ Promoter/ Professional/ Executive/ Non-Executive/ Nominee) In case of Nominee, mention whose nominee he/she is	Whether liable to retire by rotation	Number of Shares held in the Company and% of share-holding	Date of Cessation (If any)
1								
2								
3								
4								

DETAILS OF AUDITOR

AUDITOR				
Type of Auditor	Name of Auditor/ Firm& PAN	Address of the Auditor/Firm	Date of Appointment	Tenure for the appointment Date of Cessation, if any
Statutory Auditor				
Secretarial Auditor				
Cost Auditor				
Joint Auditor				
Branch Auditor				
Internal Auditor				
Others				

SECRETARIAL AUDIT

MINUTES

(a) Board Meeting

Date of Meeting	Gap between the two Board Meetings (Days)	Date of serving the notice and mode	Place of Meeting	Total No. of Directors on the Board on date of meeting	Leave of Absence granted to Director	Total No. of Directors Present	Chairman of the Meeting
1							
2							
3							
4							

(b) Meeting by Circulations

<i>Date of the Meeting</i>	<i>Date of Circulation of Draft Minutes</i>	<i>Last Date on which comments received from Directors</i>	<i>Date of signing of the Minutes</i>	<i>Date on which Minutes entered in the Minutes Book</i>

(c) Annual/Extra Ordinary General Meeting

Date of Meeting	Date of serving The notice	Place of Meeting	Cut-off Date for E-voting	e-Voting Period	Date of submit-Ting Report to ROC under Section 121 of the Act	Date of report Submitted to SE	Total No. of Members on Book Closure	No. of Members attended The meeting	No. of Proxy attended The meeting	Chair-man of the Meeting

Name of Scrutiniser for e-voting	Name of scrutiniser for poll/ballot	Date of submission of report by Scrutiniser	Date of display of results on the website and notice board

GUIDANCE NOTE ON SECRETARIAL AUDIT

(d) Committee Meeting

Name of Committee:

Type of Meeting	Date of Meeting	Date of notice	Place of Meeting	Total No. of members on date of meeting	Leave of Absence Granted	Total No. of members Present	Chairman of the Meeting

DETAILS REGARDING OFFICE OF PLACE OF PROFIT

Name of Employee and PAN	Qualification	Age (as on 01/04/___)	Designation	Date of Appointment	Remuneration as per last salary drawn	Relation on with Director/ Member drawn if any	No. of Shares held	Date of leaving employment	Reasons for leaving

KEY MANAGERIAL PERSONNEL

Name of Person and PAN	Qualification	Age (as on 01/04/___)	Designation	Date of Appointment	Remuneration as per last salary drawn (as per schedule V)	Date of taking approval from committee Board/ Members	Date of filing of MR-1 and SRN	Date of filing of MGT-14 and DIR-12 and SRN	No. of Shares held

CHARGES

Name of Person and PAN	Qualification	Age (as on 01/04/___)	Designation	Date of Appointment	Remuneration as per last salary drawn (as per schedule V)	Date of taking approval from committee Board/ Members	Date of filing of MR-1 and SRN	Date of filing of MGT-14 and DIR-12 and SRN	No. of Shares held

SECRETARIAL AUDIT

Name of Charge Holder	Charge ID	Date Of Creation/ Modification	Amount of Charge	Details of Security Provided	Whether any Personal property of Director/ other person involved	Date of Satisfaction if any	Remarks

FINANCIAL STATEMENTS

(a)	Detailed list of Loans and Advances given by the Company between 1st April, _____ to 31st March, _____ and their confirmation letters.						
(b)	Whether there are any relatives of directors/ shareholders to whom Loans and Advances have been given?						
(c)	Complete list of unsecured loan taken by the Company and their terms and conditions and with proper bifurcation between from Directors, Relative of Directors, Members and Body Corporate.						
(d)	Complete list of Sundry Creditors containing the following details:						
	(i) Nature of Balances						
	(ii) Opening Balance and Transactions made						
(e)	Statement of Related Party Transactions as per AS-18 and the Approval of Board/Shareholder for approving the transaction related to RPT.						
(f)	Details of Dividend declared:						
	Particulars						
	Amount Paid						
	Percentage of dividend paid						
	iii. Dividend Tax Paid						
	Date of Payment of Dividend						
	Actual amount claimed by the shareholder						
	Amount transferred to unpaid dividend account						
	Amount transferred to IEPF and SRN of Form I and 5INV						

GUIDANCE NOTE ON SECRETARIAL AUDIT

APPROVALS FROM RESERVE BANK OF INDIA

(a)	Whether company has made any foreign investment or company has received FDI?	
(b)	Whether company has filed annual statement related to Foreign assets and liabilities? If yes, Please mention filling date	
(c)	Whether company is having External Commercial Borrowing/issued FCCB? If yes provide copy of LRN issued by RBI and Form ECB 2.	
(d)	Whether company has made any investment in Abroad/provided guarantee to the Foreign Company? If yes, provide details.	
(e)	Whether any Show cause notice received by the company issued by Director of Enforcement/ RBI under FERA/FEMA/DIPB/other appropriate authority and reply submitted by the company for the said notices.	

PROSPECTUS

	Date of Prospectus	
	Date of Filing of Prospectus with ROC	

DEPOSITS

	Whether any deposits u/s 73 & 74 of CA 2013 have been accepted by the company.	
	If yes, Whether the provisions of the Deposit rules u/s 73 & 74 of CA 2013 have been complied with.	

STATUTORY REGISTERS

(i)	Register for application and allotment of shares	
(ii)	Register for transfer of shares	
(iii)	Register of Director, and Key Managerial Personnel	
(iv)	Register of Members	
(v)	Register of Charges	

SECRETARIAL AUDIT

(vi)	Register of contracts in which directors and KMP are interested	
(vii)	Register of Disclosure of Interest by the Directors	
(viii)	Register for declaration of interest in the shares held by another person who is not a beneficial owner	
(ix)	Register for payment of Dividend	
(x)	Register for unpaid/unclaimed Dividend	
(xi)	Register for Fixed Assets along with the locations of the assets	
(xii)	Register of Investments, Loans, Guarantee and Securities provided by the company	
(xiii)	Common Seal Register	
(xiv)	Register of issue of duplicate share certificates	
(xv)	Register of Debenture-holder	
(xvi)	Register of Employee Stock Options	
(xvii)	Register of buy-back of shares	

GUIDANCE NOTE ON SECRETARIAL AUDIT

Filling of E forms

Forms and Returns filed by the Company pursuant to the provisions of the Companies Act, 2013 read with the Rules/ Regulations made thereunder

Financial Year: 20 to 20

Sl. No.	Form No.	Section & Rule Applicable	Particulars of Filing	Date of Filing	Whether filed within the prescribed time	In case of delay, whether prescribed procedure followed and additional fees paid	Status
1	2	3	4	5	6	7	8
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

Specimen Management Representation Letter for Secretarial Audit

The following letter is a general guidance. Representation made by management may vary from one entity to another and from one year to another. It should be adopted in the light of individual requirements and circumstances.

[XYZ Limited]

M/s ABC & CO,
Company Secretaries,
ZYZ Road, India

Date:

Dear Sir,

This representation letter is provided in connection with your audit of the Secretarial Records maintained under The Companies Act, 2013 (the Act) and the rules made thereunder; (ii) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder; (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder; (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;

The Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act') and other applicable laws including labour laws like Factories Act, Payment of Gratuity Act etc for the year ended on 31st March, 20 Environmental Laws and Competition Laws for the purpose required in it. We the undersigned acknowledge our responsibility for maintaining the Secretarial records referred above and confirm, to the best of our knowledge and belief, the following representations:

Company Law

1. The Company has maintained books of accounts as required under Section 128 of the companies Act, 2013
2. The Company has complied with all the provisions of the Secretarial Standards.
3. The Company has complied with all the provisions of Companies Act, 2013 relating to Statutory Audit/Cost Audit/Internal Audit.
4. No request for transfer or transmission of shares have been received by the company during the year other than as recorded
5. Statutory Registers were kept open for public inspection during working hours on all working days
6. Notice of Board meetings were duly sent to all the directors.
7. Notes and notes to agenda were duly sent to all the directors.
8. No resolutions were passed by way of circulation during the year under review other than.
9. Draft Minutes and final minutes were properly sent to all the directors.

GUIDANCE NOTE ON SECRETARIAL AUDIT

10. Company has not obtained any secured loan from any financial institution/banks other than those mentioned in the register of charges.
11. Notice of annual general meeting has been duly sent to all the members, Directors, Statutory Auditor and Secretarial Auditors.
12. No show cause notice has been received by the company under the Acts referred above or any other laws applicable on the company.
13. We have provided to you all relevant information and have given access to all data and records.
14. There is no pending litigation and claims other than reported in the balance sheet by way of contingent liability.
15. No event other than reported to you specifically has occurred during the year which has a major bearing on the company's affairs in pursuance of the laws, rules, regulations, guidelines, standards, etc. referred to above.
16. The views of all the dissenting Directors (if any) on important matters have been captured and recorded in the minute.
17. The venue and time of Board meeting was finalized with the consultation of all board members.
18. _____
19. _____

Securities Laws

1. All Price Sensitive Information was informed to the stock exchanges from time to time
2. All investors complains directly received by the company are recorded on the same date of receipt.
3. The Company has complied with provision of SEBI (LODR) Regulations, 2015.
4. _____

Specific Applicable Laws

Labour Laws

1. All the premises and establishments have been registered with the appropriate authorities.
2. The Company has not employed any child labour/Bonded labour in any of its establishments.
3. The company is ensuring the compliance of PF/ESI and other social security measures to the contract employees. One of the responsible officers of the company carries out the survey regarding the compliance of this.
4. _____

Environmental Laws

1. The Company is not discharging the contaminated water at the public drains/rivers. The

SECRETARIAL AUDIT

company has efficient water treatment plants at its factory premises (if applicable)

2. The company has been disposing the hazardous waste as per applicable rules

Competition Law

List of other laws generally applicable to the company We are attaching herewith the list of laws

1. Applicable specifically to the company.
2. Other Laws applicable to the company
3. _____
4. _____

Date:

[For XYZ Limited]

Place:

Director

Prologue:

COMPLIANCE MANAGEMENT SYSTEM

Compliance is a permanent and integral part of business processes that is ongoing and needs continuous tuning in line with the business environment and the applicable regulatory ambit. Compliance Management System should provide processes for

- preventing non-compliances through mechanism such as Compliance risk Management framework, Policies, Processes & Procedures, Training and Communication, Code of Conduct & Ethics programme etc.;
- detecting non-compliances through mechanisms such as effective whistle blowing, compliance controls, compliance audits etc.;
- responding to non-compliance through remedial action, implementation of control tools for non-recurrence of such non-compliance etc.

Through an effective Compliance Management System, the business and its constituents learn about the compliance responsibilities individually and for the organisation as a whole, making them a part of business processes; review operations to ensure responsibilities are carried out and requirements are met; and timely corrective action are taken.

The objective of this template is to help the secretarial auditor in evaluating the critical aspects of compliance management. Check-lists have been provided under each head, along with the intent of the questions. Secretarial Auditor may fine tune the same to company specific depending on the nature of industry, size of organisation and other relevant aspects that impact the compliance management system.

COMPLIANCE MANAGEMENT SYSTEM - TEMPLATE

The Objective

The objective of Compliance Management System is to manage the compliance risk effectively, to promote ethical culture in the organisation, resulting in the maintenance and enhancement of the reputation of the Company. Compliance management through systematic processes helps in achieving compliance of all applicable laws.

The objective of Compliance Management System is -

- To establish and maintain centralised mechanism to ensure compliance with all applicable laws (both Indian and International).
- To establish and maintain effective co-ordination of functional units and the compliance department under the overall supervision of the Board.
- To incorporate changes in the existing applicable laws or introduction of new laws, into the

SECRETARIAL AUDIT

compliance process in real time manner.

- Effective communication of the changes in the regulatory mandates to the applicable functional and other units in real time manner.
- To provide training on compliance requirements at regular intervals.
- To introduce and implement ethics programmes for Board, Senior Management and other staff members.
- To establish pro-active compliance risk management culture into the organisation.
- To establish effective monitoring and control systems.
- To adopt fair market practices.
- To establish mechanisms to prevent, detect, report and to respond to non-compliances.
- To introduce effective whistle blowing mechanism.
- To establish compliance dashboard.
-
-

The Scope

1. A. Compliance with applicable laws

-
-
-
-

(To be kept updated and amended from time to time)

B. Adherence to Company Specific internal policies and procedures

- Code of Conduct
- Code on prevention of Insider Trading
- Policy on related party transaction
- IT Policy
-
-

- 2 Adherence with Vision and Mission statement of the Company.
3. To devise code of conduct for Board, senior management and employees
4. Conducting training on compliance, ethics, code of conduct.

GUIDANCE NOTE ON SECRETARIAL AUDIT

5. Establishment of Corporate Compliance Committee.
6. Appointment of Chief Compliance officer.
7. Quarterly compliance Report to be presented to the Board.
8. Identification and classification of various compliance risks.
9. Organisation of compliance Audit, feed back, remedies.
10.
11.

Compliance Risk

Compliance risk is the current and prospective risk to earnings or capital arising from violations of, or non-conformance with, laws, rules, regulations, prescribed practices, internal policies, and procedures, or ethical standards. This risk exposes the institution to fines, civil money penalties, payment of damages, and the voiding of contracts. Compliance risk can lead to diminished reputation, reduced expansion potential and an inability to enforce contracts.

The Chief Compliance Officer

The Corporate Compliance Officer (CCO) is the custodian of the Corporate Compliance Plan. The CCO should report on compliance activities that include but are not limited to:

- To establish and review the centralised compliance management system in tune with business environment, strategic decisions of the company and the regulatory amendments.
- To guide and educate the Board on various compliances, regulatory and policy based compliances.
- To devise clear compliance structure
- Liaison between Board, Functional heads and compliance staff.
- To advise the Compliance department regularly and as and when required.
- To devise annual compliance plan.
- To define the role and responsibilities of functional units and disseminate the information.
- To organise training for the Board and the staff on ethics and compliance.
- To establish and strengthen the Compliance Dashboard.
- Inform the Board and the functional departments about changes in the applicable regulatory landscape and its implications on the organisation.
- To establish processes for effective monitoring and control.
- To present quarterly compliance report before the Board.
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Board Level Corporate Compliance Committee

The primary responsibility of the Corporate Compliance Committee is to oversee the company's Corporate Compliance Program with respect to:

- (I) compliance with the laws, rules and regulations applicable to the company;
- (II) Compliance with the Company's Code of Conduct;
- (III) Compliance with Company's policies and procedures;
- (IV) Compliance with established standards;
- (V) Compliance with prevention and detection of fraud, misappropriation etc.;
- (VI) Oversight of the risk management activities of the company and the protection of stakeholders;
- (VII) Making recommendation to revise the compliance management programme.

The Compliance Department

The company should have a dedicated compliance department which should be independent and sufficiently resourced. It should not be entrusted with any business targets. They have to work closely with functional units. The staff of compliance department should have fair knowledge of applicable laws, internal policies etc and should be imparted training at regular intervals. The Chief Compliance Officer shall oversee the activities of Compliance Department.

The Compliance Dashboard

- The Compliance Dashboard should alert the company in the risk prone areas or non compliances.
- It should display the compliance obligations on the compliance calendar or dashboard
- Before the date of regulatory mandate, and e-mail should be sent to the compliance owner.
- The Compliance owner should send the response once compliance is done.

The compliance dashboard helps in simplifying the compliance obligation, effectively managing the compliance risk, facilitating board oversight, effective co-ordination of functional units.

Compliance System- Checklists

A. Board Oversight

S. No	Question	Yes/ No	Intent
1	Does the Board approve compliance report on the applicable Laws?		The Board should be updated on Compliance with the applicable laws at least every quarter, ensuring compliance by all functional heads and presented by Compliance department/ Chief compliance officer. This helps in effective Board oversight.

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2	Does the Board review Compliance Management programme at regular intervals?		Compliance Management programme has to be revisited at regular intervals in tune with the business environment, regulatory changes etc.
3	Do the members make use of Compliance Dash Board effectively and act upon it when required?		The Board Members are expected to visit Compliance Dashboard at regular intervals in over-seeing the compliance level in the organisation.
4	Is the Board updated with the applicable laws?		The Board should be updated with the applicable laws at regular intervals that helps the Board in reviewing compliance plan, overseeing compliances, reading compliance dash board etc.

B. Chief Compliance officer

S. No.	Question	Yes/ No	Intent
1	Has the Company appointed Chief Compliance Officer?		Overall Ownership should lie with an exclusive individual who has strong hold on laws, rules and regulations. Appointment of Chief Compliance Officer helps in effective co- ordination of compliances by business units.
2	Has the role of Chief Compliance officer been specifically defined?		As part of Compliance programme, the specific duties of Chief Compliance Officer be defined. This helps in casting the responsibility as well.
3	Is the Chief Compliance Officer an independent person?		Chief Compliance Officer shall be an independent person who should not have any pecuniary interest with the company and should not be associated with any specific business unit.
4	Is the Chief Compliance Officer reporting to Board?		Chief Compliance Officer reporting directly to Board helps in direct and effective communication of compliance aspects with the top management.
5	Does the Compliance Officer participate in major decisions?		The Chief Compliance officer should participate in important strategic and contractual decisions. This helps him in assessing the legal implications of the same on the company.

SECRETARIAL AUDIT

C. System and Process

S. No.	Question	Yes/ No	Intent
1	Has the company put in place, a centralised mechanism for tracking and monitoring compliance?		When there are business/functional units at different locations, centralised mechanism of tracking and monitoring compliance helps in effective co-ordination of different business units.
2	Has the company put in place the process for development and approval of table of applicable laws, function wise and criticality wise?		The company should have defined process in place for updating the table of applicable laws. For example at every quarter or introduction of new law or amendment to existing law, as the case may be.
3	Does the company have in-built mechanism in place for alerts whenever there is any identification of various laws and its applicability to the organisation, specifically based on the functions? If so, is the implementation process for the same		The process should provide for change in the regulatory ambit applicable to the company.
4	Has the company paid any penalty for any compliance failure? If so, has the company made gap analysis and taken remedial measures?		The compliance mechanism should provide for no-tolerance to non-compliances. Non-compliances are to be addressed through establishing necessary controls for the same.
5	Has the company appointed designated compliance officials (Compliance owners) at unit level?		Compliance Owners at unit level helps in ensuring compliance in the respective business units.
6	Has the company co-ordinated the activities of designated compliance official functional heads, Chief Compliance officer and the Board of Directors?		Co-ordination of unit level compliances are essential for ensuring overall compliance.
7	Is the Compliance Management System subject to periodic Audit?		The existing Compliance management should be subject to periodic audit that helps in bringing effective control.

GUIDANCE NOTE ON SECRETARIAL AUDIT

D. Corporate Compliance Committee

S. No.	Question	Yes/ No	Intent
1	Has the company constituted corporate compliance committee?		Constituting the Board level Corporate Compliance Committee helps in the effective involvement of the Board in compliance management.
2	Are Functional Heads and Chief Compliance Officer participating in the meetings of Corporate Compliance Committee?		Participation of Functional Heads and the Chief Compliance Officer in the meeting of Corporate enhances the quality of discussions and decisions.
3	Does the committee meet atleast in every quarter?		The Committee should meet atleast once in a quarter. This may be in line with assessment

E. Compliance Risk Management

S. No.	Question	Yes/ No	Intent
1	Is compliance risk a part of ERM?		Compliance risk should be classified as one of the major risks under ERM.
2	Has the company classified the compliance risk based on criticality (Legislation- wise)?		Some non-compliances may be cognizable and/or non-compoundable. The company should identify the compliances based on criticality. Compliance risks are to be assessed by Chief Compliance Officer in consultation with functional heads.
3	Are the Compliance Owners aware of financial implications of critical non-compliances?		The Compliance Owners should be aware of implications of non-compliances.
4	Does the Company undertake Compliance Risk Analysis?		Compliance risk analysis helps establishing effective compliance controls.

F. Training and Communication

S. No.	Question	Yes/ No	Intent
1	Has the company imparted training to senior management & employees on compliance programme covering regulatory aspects and the internal policies?		Regular training helps in understanding the intent, process and consequences of compliances in better manner
2	How does the company communicate with the employees on ethical issues?		Reiterating on ethical issues is essential in any organisation, that would bring overall ethical culture in the organisation.

2

COMPLIANCES UNDER COMPANIES ACT, 2013

Introduction

Companies are expected to create an environment which ensures the protection of interest of the stakeholders viz. shareholders, lenders, employees, customers, vendors, service providers, regulators, etc. is paramount.

A company will be failing in its duty and commitment to be a responsible and good corporate citizen, if it does not comply with the provisions of law, as the laws of the land are made with an intention to safeguard the public interest at large.

General Compliance Requirements

The Companies Act is the key statute, which a Company has to comply in letter and spirit for ensuring the betterment of all stakeholders. As per section 204 of the Companies Act, 2013 (the Act) read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and a company belonging to other class of companies as may be prescribed i.e. (a) every public company having a paid-up share capital of fifty crore rupees or more; or (b) every public company having a turnover of two hundred fifty crore rupees or more, are required to annex to its Board's report a Secretarial Audit Report, given by a company secretary in practice. The Secretarial audit report gives thrust on various statutes, systems, processes which provides an assurance to the investors and regulatory authorities on the governance practices of the Company.

The Companies Act, 2013 and rules thereunder is the first legislation covered under the scope of the Secretarial audit. This Chapter provides guidance to the members on checking the compliance of the provisions of this law.

The Secretarial auditor is expected to update on the amendment in the Act and the Rules, which may occur from time to time. The secretarial auditor should inter- alia verify about the Maintenance of statutory registers and records and compliances. The following is a list of documents which a Secretarial auditor is required to inspect:

1. Memorandum and Articles of Association
2. Forms filed with the Registrar of Companies with receipts.
3. Index of Meetings held during the financial year.
4. Minutes of the Board, its Committees and of General meeting.
5. Proof of Circulation of Notice and Agenda of Board meetings, Committee meetings and the General meeting

GUIDANCE NOTE ON SECRETARIAL AUDIT

6. Proof of circulation of Draft Minutes and Final Minutes of meeting of Board and its committees.
7. Attendance Register of Board and committee meetings
8. All statutory registers.
9. Copy of financial statement along with notes to accounts and Auditor Report.
10. Report of Internal Auditor.
11. Notices of annual and event based disclosure of directors' interests.
12. Copies of contracts made between the company and any of the related parties
13. Shareholder List, details of Share Transfers which have taken place during the financial year
14. Copy of Share Transfer Deeds.
15. Instruments creating, modifying or satisfying charges.
16. Forms relating to Disclosures from Directors.
17. Certificate from RTA stating the number of shareholders as on the close of the financial year.
18. Certified true Board Resolution for any type of corporate actions taken by the Company
19. Details of the Holding and Subsidiary Companies
20. Complete details of Shares and Debentures issued during the year.
21. Details of change in shareholding of the promoters and top ten shareholders of the Company under Section 93.
22. Details with respect to maintenance of cost records and appointment of cost auditor.
23. Details of appointment of Auditor and Internal auditor.
24. The list of Related Party Transactions.
25. Indebtedness Certificate signed by Company Secretary/ CFO of the Company.
26. Listing and Trading Approval(s) from Stock Exchanges.
27. Intimation to Stock Exchanges, Confirmation from National Securities Depository Limited (NSDL) and Central Depository Services (India) Limited (CDSL) for change of the name of the company, change in the face value of equity shares, etc.
28. Change of name of the company, change in the face value of the company, new ISIN No of the Company in respect of the allotment or as a result of any change in capital structure due to any corporate action taken by the Company during the financial year under audit.
29. Corporate Action Forms filed by the Company with Depositories.

COMPLIANCES UNDER COMPANIES ACT, 2013

30. Equity Shareholding pattern and its break up as at the close of the financial year.
31. Any orders received by the company from the High court/Tribunal or from any other regulatory body.
32. Compliance record under FEMA with respect to FDI, ECB and ODI as applicable.
33. Copies of Shareholders and joint ventures agreement, if any.
34. Copy of Declaration received from Independent Director u/s 149(7).
35. Corporate Social Responsibility (CSR)
36. Directors and Key Managerial Personnel (KMP)
37. Bank Statements relating to transfer of Dividend to separate bank account, proof of dispatch of dividend within 30 days of Dividend
38. Advertisement/circular relating to Deposits; Credit rating certificate, deposit insurance, if any
39. Such other documents as required for the purpose of audit.

A Company Secretary in Practice in order to verify the compliances has to verify the secretarial records of the company with the help of the following checklists:-

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Section 3 to Section 22 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

- Incorporation of Company i.e. Private, Public, Section 8
- Alteration of Memorandum
- Alteration of Article

Alteration of Memorandum

In the following cases amendment is required in the Memorandum of Association (MOA) as per provisions of Section 13 of the Act read with Companies (Incorporation) Rules, 2014

1. Change of Name;
2. Alteration of Authorized Capital;
3. Change in Objects, and
4. Shift of Registered Office

1. Change in Name

When a company desiring to change its name may do so in accordance with the provisions of Section 13 read with Section 4 of the Act by passing Special Resolution and the name approved by

GUIDANCE NOTE ON SECRETARIAL AUDIT

the Ministry of Corporate Affairs (MCA) on prescribed application.

2. Alteration of Authorized Capital

A Company may alter its Authorized Capital i.e. Capital Clause by virtue of Section 13 read with Section 61 by passing an Ordinary Resolution.

The Capital Clause will be altered by prescribed process as per the applicable rules and payment of relevant stamp duty as may be applicable and levied by concerned state in which the registered office of the Company is situated.

3. Change in Objects

A company may change its objects as enshrined in its MOA in accordance with the provisions of Section 13 of the Act. Accordingly, any alteration of MOA with respect to the objects of the company is permitted through Special Resolution.

However, Section 13 (8) restricts the change in object of a company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised unless a special resolution is passed by the company and the details of such resolution shall be published in one vernacular language and one English language newspaper in circulation at the place of registered office of the company as well as on the website of the company indicating the justification for such change in the object.

4. Shifting of Registered Office

As per Section 12 of the Act, every company shall have a registered office at all times, to which all communications and notices may be addressed.

Every company within 15 days of its incorporation or any change in the address of its registered office shall furnish a verification of its registered office in INC-22 prescribed under Companies (Incorporation) Rules, 2014.

A company is permitted to change its registered office from its existing location to another location-

- Within the local limits of the same city, town or village
- Outside the local limits of the same city, town or village but within same state under jurisdiction of same ROC
- under jurisdiction of another ROC within same state
- One State to another State.

A. Checklist for Alteration of Memorandum of Association (Section 13)

S. No.	Particulars	Remarks
1	Check whether the purpose of Alteration of Memorandum. If the alteration is for: a) any purpose other than the purpose mentioned under section 61,	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	<p>b) alteration as required under section 61 of the Companies Act, 2013, requires special resolution under the Articles of Association</p> <p>check whether the company has passed the special resolution and filed Form MGT-14 with the Registrar as per Companies (Management and Administration) Rules, 2014.</p>	
2	Check whether the company has altered its name with the approval of Central Government.	
3	Check whether the company has obtained fresh certificate of incorporation from the Registrar in Form No.INC.25 as per Companies (Incorporation) Rules, 2014.	
4	If the company has shifted the registered office from one state to another state, it is with the approval from the Central government. The application to be filed in form INC 23. Check whether the order of the Central Government is filed with the Registrars of Companies of both the states in Form No INC 28 within 30 days from date of receipt of certified copy of order.	
5	<p>In case company has raised money from public through prospectus and still has any unutilised amount out of the money so raised, a special resolution has been passed through postal ballot by the company to change its objects for which it raised the money through prospectus –</p> <ul style="list-style-type: none"> • the notice contains the details as provided in Rule 32 of the Companies (Incorporation) Rules, 2014 • the details, were published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and was placed on the website of the company, indicating therein the justification for such change; <p>the dissenting shareholders were given an opportunity to exit by the promoters and shareholders having control in accordance with regulations specified by the Securities and Exchange Board.</p>	
6.	Check that the alterations are noted in every copy of the Memorandum in terms of section 15.	

Checked by:

Reviewed by:

Date:

Date:

GUIDANCE NOTE ON SECRETARIAL AUDIT

Indicative list of documents to be checked (Alteration of Memorandum)

- Notice convening general meeting with relevant explanatory statement
- Documents relating to Conduct of meeting as per Secretarial Standards
- Minutes of General Meeting
- Annual Return
- Financial Statement
- Advertisement for change in objects /shifting of registered office
- Amended Memorandum of Association
- Amended Articles of Association
- INC23, INC24, INC25, INC26, INC28, MGT14 (along with attachments and challans)

B. Alteration of Articles (Section 14)

Instances wherein the change in article is required

- Change in any clause of Articles
- Conversion of a private company into a public company; or
- Conversion of a public company into a private company:

A company may alter its Articles by passing a special resolution. This requires that the due importance and care should be given to check whether the alteration of AoA is not in conflict with the provisions of the Memorandum of Association or the Companies Act. A copy of every special resolution altering the Articles must be filed with the Registrar within 30 days of its passing

Checklist for Alteration of Article

S. No.	Particulars	Remarks
1	The company has passed special resolution with respect to alteration of articles and has filed form MGT 14.	
2	In case of conversion of a private company into a public company or vice versa, the application was filed in Form No. INC. 27.	
3	A copy of the order of the Tribunal approving the alteration has been filed with the Registrar in Form No. INC.27 together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Tribunal.	
4	Check that the provision for entrenchment has been made by an amendment in the Articles, with the consent of all the members in case of a private company/by passing special resolution in case of a public company.	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
5	Every alteration made in the memorandum or articles has been noted in every copy of the memorandum or articles. Articles and the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) of section 117 shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the resolution.	
6	<p>The company sends on payment of fee, a copy of each of the following documents to a member within seven days of the request being made by him-</p> <ul style="list-style-type: none"> • the memorandum; • the articles; <p>Every agreement and every resolution referred to in section 117(1) if they have not been embodied in the memorandum and articles.</p>	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked (Alteration of Articles)

- Notice convening general meeting with explanatory statement
- Conduct of meeting as per Secretarial Standards
- Minutes of General Meeting
- Amended Memorandum of Association
- Amended Articles of Association
- INC27, MGT14(along with attachments and challans)

I. PROSPECTUS AND ALLOTMENT OF SECURITIES

Section 23 to Section 42 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

- Public Offer of Securities
- Issue of Prospectus
- Allotment of Securities
- Issue of Securities by Depository Receipt
- Private Placement

GUIDANCE NOTE ON SECRETARIAL AUDIT

In case the company has issued Prospectus during the Audit Period, the provisions of the Companies Act, 2013 along with the SEBI Regulations should be verified.

A. Private Placement (Section 42)

S. No.	Particulars	Remarks
1	To check whether offer is made only to a select group of people who have been identified by the board does not exceed 200 in the aggregate in a financial year for each kind of security. It is to be noted that any offer or invitation made to qualified institutional buyers or to employees of the company under scheme of employees stock option shall not be considered while calculating the limit of two hundred persons.	
2	No allotment against any previous offer / invitation of any kind of security is pending. Non- banking financial companies and Housing Finance Companies are exempted from these provisions.	
3	Company has passed special resolution for each offer / invitation (except in case of NCDs, where one resolution in a year for all offers during the year is sufficient).	
4	Explanatory statement contains justification for price and premium, if any and requirements of section 102, if any.	
5	Issue of a private placement offer letter and application in prescribed form. Ensure such private placement offer and application form shall not carry any right of renunciations.	
6	Requirements of Private placement offer letter: <ul style="list-style-type: none"> a) Was accompanied by serially numbered application form b) Addressed specifically to the person to whom offer is being made c) Sent to only such person in writing / electronically d) Sent within 30 days of recording names in the list e) No person other than the addressee was allowed to apply through application form. 	
7	Check whether that the subscription money is paid either by cheque or demand draft or other banking channel but not in cash.	
8	Company to maintain record of the bank account from which	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	payments received. Check whether that payment has been made from the bank account of the person subscribing to such securities.	
9	In case of joint holders, check whether the payment was received from first applicant only	
10	Allotment was completed within 60 days from date of receipt of application form. If not, application money repaid within 15 days of completion of 60 days. If not repaid, the application money along with interest at 12 percent per annum from expiry of 60th day was paid.	
11	Board resolution to specifically contain authority for issuance of share certificates to two directors or by a director and the Company Secretary where the Company has appointed a Company Secretary.	
12	Share application money to be kept in separate bank account and was utilized only for (a) adjustment against allotment or (b) repayment.	
13	Company filed Return of allotment in prescribed form within 15 days.	
14	Check whether the list of allottees attached with the E form.	
15	Share certificates were issued within 2 months of allotment of shares / 6 months of allotment of debentures.	
16	In case of contravention, money was refunded within 30 days of order imposing the penalty.	
17	Company has made entry in Register of Members Securities holders.	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked:

- Minutes of Board Meeting
- Notice convening general meeting with relevant explanatory statement
- Bank Statement
- Certified copy of the special resolution
- Register of members/securities holders
- Valuation report

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- Board resolution authorising person to sign certificate
- Proof of dispatch of PAS-4
- PAS-3 (including List of Allottees), PAS-4, PAS-5, MGT-14

III. SHARE CAPITAL AND DEBENTURES

Section 43 to Section 72 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

- Issue of shares with differential rights
- Issue of Sweat Equity Shares
- Issue and redemption of Preference shares
- Transfer and transmission of shares
- Rectification of Registers of Members
- Events covered under this chapters
- Further issue of share capital
- Issue of Bonus Share
- Alteration of Share capital
- Reduction of Share capital
- Buyback of Securities
- Issue & redemption of Debentures

A. Checklist for Issue of shares with differential rights:

S. No.	Particulars	Remarks
1	Check whether the articles of association of the company authorize the issue of shares with differential rights.	
2	Whether the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders. Incase equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot.	
3	Whether the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time.	
4	Whether the company having consistent track record of distributable profits for the last three years.	
5	Whether the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares.	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
6	Whether the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend.	
7	Whether the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government. Check whether 5 years have elapsed from the end of the financial year in which such default was made good.	
8	Whether the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.	
9	Whether the Explanatory Statement annexed with the notice of the general meeting contains the details as required under rule 4(2) of the Companies (Share capital and Debentures) Rules, 2014.	
10	Check whether the company has not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.	
11	Check whether the Entry in Register of Members maintained under section 88 has contain all the relevant particulars of the shares so issued along with details of the shareholders.	
12	Check that the Board's Report for the financial year in which the issue of equity shares with differential rights was completed contains the details as required under rule 4(4) of the Companies (Share capital and Debentures) Rules, 2014.	

Checked by:

Reviewed by:

Date:

Date:

GUIDANCE NOTE ON SECRETARIAL AUDIT

I. Checklist for Issue of Certificates of Shares and other Securities including Issue of renewed or duplicate share Certificate (Section 46)

The certificate of shares shall be issued in pursuance of a resolution passed by the board under the common seal, if any of the company and signed by two directors or by a director and the company Secretary wherever the company has appointed Company Secretary and specify the details of shares held by such person and the date of issue of Shares.

S. No.	Particulars	Remarks
1	The company has allotted shares/debentures and entered the names of allottees in the register of members/debenture holders; (Note: where the register and index of beneficial owners is maintained by a depository it shall be deemed to be corresponding to the register of members).	
2	The company has issued and delivered share certificates as per section 46 of the Act;	
3	Whether Board has passed a resolution for the issuance of certificate of any share or shares.	
4	The company has executed Debenture Trust Deed in case of secured debentures.	
5	The company has complied with delivery of certificates within the time limits prescribed under section 56(4).	
6	Proper stamp duty has been paid.	
7	The certificates are issued in accordance with the provisions of the Articles of Association.	

Checked by:

Reviewed by:

Date:

Date:

C. In case of Issue of Renewed and Duplicate Share Certificate:

S. No.	Particulars	Remarks
1	Check that whether the duplicate certificate of shares has been issued, for such certificate which — (a) is proved to have been lost or destroyed; or (b) has been defaced, mutilated or torn and is surrendered to the company.	
2	Check whether the prior consent of the Board has been obtained for issue of the duplicate shares and the supporting documents were	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	placed before the board.	
3	Check whether the words “duplicate issued in lieu of share certificate No.....” and the word “duplicate” shall be stamped or printed prominently on the face of the share certificate.	
4	In case unlisted companies: <ul style="list-style-type: none"> • Check whether the duplicate share certificates has been issued within a period of three months from the date of submission of complete documents with the company. In case of listed companies: <ul style="list-style-type: none"> • Check whether the duplicate share certificate has been issued within a period of fifteen days, from the date of submission of complete documents with the company. 	
5	Check whether entries made in the Register of Renewed and Duplicate Share Certificates are authenticated by the company secretary or such other person as may be authorised by the Board. Check that the register is kept at the registered office of the company or at such other place where the Register of Members is kept and is kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.	
6	Check whether the certificate of any share or shares is not be issued in exchange for those which are sub-divided or consolidated, unless the certificate in lieu of which it is issued is surrendered to the company.	
7	Check whether the certificate of any share or shares is not be issued in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out, or where the pages on the reverse for recording transfers have been duly utilised, unless the certificate in lieu of which it is issued is surrendered to the company.	
8	Whether the company has stated on the face of the share certificates and be recorded in the Register maintained for the purpose, Issued in lieu of share certificate No..... Sub-divided /replaced/ on consolidation as applicable.	

Checked by:

Reviewed by:

Date:

Date:

GUIDANCE NOTE ON SECRETARIAL AUDIT

Indicative list of documents to be checked:

- Register of members
- Register of renewed or duplicate shares certificate (SH-2)
- Minutes of Board Meetings
- Letter of Allotment or fractional coupons
- Letter of acceptance or of renunciation

D. Checklist for Calls on Shares/Debentures

S. No.	Particulars	Remarks
1	Whether the call on shares/debentures was made by the Board of directors by means of resolutions passed at the Board meeting in terms of section 179(3).	
2	Check whether the said resolution is filed in form MGT-14 with the Registrar in case of public companies except IFSC Public companies.	
3	Whether call on shares/debentures complied with the stipulations contained in the Articles of Association;	
4	Whether the Board of directors approved the rate of interest payable on delayed payment of calls in conformity with the provisions contained in the Articles of Association.	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked:

- Minutes of Board meeting
- Articles of Association
- MGT-14
- Bank statement
- Copies of Call letter
- Proof of dispatch of call letters

E. Security Premium account

S. No.	Particulars	Remarks
1	Check whether the Security premium account is applied by the	

COMPLIANCES UNDER COMPANIES ACT, 2013

	<p>company</p> <ul style="list-style-type: none"> • towards issue of unutilized shares of the company as bonus shares; • in writing off of preliminary expenses; • in providing premium on redeemable preference shares; • for purchase of its own shares or of any debentures under section 68. 	
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Checked by:

Reviewed by:

Date:

Date:

F. Checklist for Issue of Sweat Equity Shares (Section 54)

S. No.	Particulars	Remarks
1	Check whether the equity shares are issued to the directors or employees of the company who are eligible in terms of section 54.	
2	Check whether the issue is authorized by a special resolution passed by the company.	
3	Check whether the resolution specifies the number of shares, Current market price, consideration and class of directors and employees.	
4	In case of Listed Company, check whether the issue of Sweat Equity Shares is in compliance with the SEBI (Issue of Sweat Equity) Regulations, 2002.	
In case of an unlisted Company		
5	The issue is authorised by a special resolution passed by the company, ensuring that the special resolution authorising the same is valid for making the allotment within a period of not more than twelve months from the date of passing of the special resolution.	
6	Explanatory statement to be annexed to the notice of the general meeting contains the specified particulars [Rule 8 of the Companies (Share Capital and Debenture) Rules, 2014].	
7	The company has not issued sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher. Further it is to be ensured that the issuance of sweat equity shares in	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	the Company has not exceeded twenty five percent, of the paid up equity capital of the Company at any time.	
8	The Sweat Equity Shares to be issued are valued at a price determined by a registered Valuer.	
9	The Sweat Equity Shares issued are locked in / non transferable for a period of three years from the date of allotment. The fact and the period of lock in, is stamped in bold on such share certificates.	
10	The amount of Sweat Equity shares issued is included as a part of managerial remuneration while calculating the limits. 10. Details as per Rule 8(13) of Companies (Share Capital and Debentures) Rules, 2014 of the Sweat Equity shares are mentioned in the Director's Report.	
11	The company is maintaining Register of Sweat Equity Shares in Form No. SH.3.	
12	The Register of Sweat Equity Shares is maintained at the registered office of the company or such other place as the Board may decide.	
13	The entries in the register are authenticated by the Company Secretary of the company or by any other person authorized by the Board for the purpose.	
14	Check the accounting treatment of non-cash consideration for sweat equity shares.	

Checked by:

Reviewed by:

Date:

Date:

- In case of listed company Regulation 10 of SEBI (Issue of Sweat Equity) Regulation, 2002 require that in the general meeting subsequent to the issue of sweat equity, the Board of Director shall place a certificate from the Auditor of the company to effect that the issue of sweat equity is in accordance to the resolution passed by the company.
- Statement to Stock exchange within 7 days of issue of equity disclosing details of the issue.

Indicative list of documents to be checked:

- Minutes of Board Meeting
- Special Resolution with Explanatory Statement
- Minutes of General meeting

COMPLIANCES UNDER COMPANIES ACT, 2013

- Register of members
- Approvals of registration from sectoral regulators such as RBI, SEBI etc.
- Valuation Report
- Board's Report
- INC-21, SH-3
- PAS-3, MGT-14

G. Checklist: Register of Sweat Equity Shares (Section 54)

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

Checked by:

Reviewed by:

Date:

Date:

H. Issue and Redemption of Preference Shares (Section 55)

Checklist for Issue of Preference shares

S. No.	Particulars	Remarks
1	A company is authorized by its articles to issue preference shares.	
2	The preference shares shall be liable to be redeemed within a period not exceeding twenty years. A company engaged in the setting up and dealing with or infrastructure projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum of ten per cent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.	
3	The issue of preference shares has been authorized by passing a special	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	resolution in the general meeting of the company;	
4	The explanatory statement to be annexed in the notice of general meeting shall provide complete material facts concerned with and relevant to the issue of preference shares including details mentioned in sub-rule (3) of rule 9 of the Companies (Share Capital and Debentures) Rules, 2014.	
5	The company, at the time of such issue of preference shares has no subsisting default in the redemption of preference shares issued either before or after the commencement of the Act or in payment of dividend due on any preference shares.	
6	<p>The resolution for issue of preference shares has set out the following matters:</p> <ul style="list-style-type: none"> a) priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares; b) participation in surplus dividend; c) participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid; d) Payment of dividend on cumulative or non-cumulative basis.(e) Conversion of preference shares into equity shares. e) Voting rights. f) Redemption of preference shares. <p>Check that the entries in the Register of Members are duly made Check that the share certificates are duly issued</p>	
7	All the terms of issue of Preference shares other than those prescribed, such as when the preference dividend shall be due etc are clearly defined Redemption of preference shares	
8	Check whether the redemption is only on the terms on which they were issued or as varied after due approval of the preference shareholders.	
9	Check that the redemption is only out of profits or out of proceeds of fresh issue of shares	
10	Check that the preference shares redeemed were fully paid	
11	Check the premium paid is as per the provisions of the Act	

Checked by:

Reviewed by:

Date:

Date:

COMPLIANCES UNDER COMPANIES ACT, 2013

Indicative list of documents to be checked:

- Articles of Association
- Financial statement
- Notice with explanatory statement
- Minutes of General Meeting
- Register of Members

Transfer and Transmission of Shares (Section 56)

Checklist for Transfer and Transmission of Shares

S. No.	Particulars	Remarks
I. Transfer of Shares		
1	The requirements contained in the Articles of Association have been complied with.	
2	The transfer of shares/debentures and the issue of certificates thereof have been made within the time stipulated under section 56 in accordance with the procedures prescribe .i.e. In case of Transfer or Transmission of share 1 month from the date of receipt of the instrument.	
3	The company receives instrument of transfer in Form No.SH-4 in respect of physical form of securities.	
4	An application has been made in respect of partly paid up shares of the company. If yes, the company has given notice of application in Form No. SH-5 to the transferee and received no objection to the transfer.	
5	The company has taken indemnity in respect of instrument of transfer that has been lost or not delivered within the prescribed limit.	
6	Entries in the register of transfers have been made from time to time.	
7	All transfers have been properly included in the Annual Return.	
II. Transmission of shares		
8	The shares have been transmitted to the legal representative of the deceased shareholder in the case of death of a sole shareholder and in the case of joint holdings only to the survivor(s), except	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	where nomination had been received from the shareholder.	
9	Transmission of shares is effected upon the production of death certificate succession certificate or probate or letter of administration or indemnity duly signed by the legal heirs of the deceased or as per procedure stipulated by the Board of directors and/or Articles of Association.	
10	Check that the certificates are issued within the time limits prescribed under section 56.	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked:

- Instrument of transfer (S.H. 4)
- Notice to transferee (S.H. 5)
- Share certificates
- Letter of Allotment of Securities
- Order of Court/ Tribunal/ other authority, if any
- Article of Association

J. Register of Renewed or Duplicate Share Certificate [Rule 6, Companies (Share Capital and Debentures), Rules, 2014]

S. No.	Particulars	Remarks
1	The renewed share certificate of any share or shares have not been issued unless the certificate in lieu of which it is issued is surrendered to the company	
2	Where certificates were issued in case of sub-division or consolidated or in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out, or where the pages on the reverse for recording transfers have been duly utilised, the renewed certificate states on the face of it, that it is "Issued in lieu of share certificate No..... sub-divided/replaced/on consolidation".	
3	Prior/Board consent was obtained before issuance of the duplicate share certificate in lieu of those certificates that are lost or destroyed.	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
4	The certificates issued under above stated circumstances state prominently on the face of it that it is “duplicate issued in lieu of share certificate No.....”. and the word “duplicate” is stamped or printed prominently on the face of the share certificate.	
5	The entries relating to issuance of renewed/ duplicate certificates are recorded in the Register for Renewed or Duplicate Share Certificate.	
6	Check that In case of unlisted companies, the duplicate share certificates are issued within a period of 3 months and in case of listed companies such certificate shall be issued within 45 days, from the date of submission of complete documents with the company respectively.	
7	The register for renewed or duplicate share certificates is maintained in Form No. SH-2 in accordance with Companies (Share Capital and Debentures) Rules, 2014 and is kept at the registered office of the company or at such other place where the Register of Members is kept.	
8	Entries are incorporated simultaneously in the Register of members maintained under section 88.	
9	All entries made in the Register of Renewed and Duplicate Share Certificates shall be authenticated by the company secretary or such other person as may be authorised by the Board for the purposes of sealing and signing the share certificate.	
10	The register is preserved permanently and kept in the custody of company secretary of the company or any other person authorized by the Board for the purpose.	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked

- Minutes of Board Meetings/Meeting of Committee of Directors
- Register of renewed and duplicate share certificates in Form SH-2
- Register of members

K. Preferential Allotment by Companies U/S 62

Kinds of securities covered:

- (i) equity shares,
- (ii) convertible preference share,

GUIDANCE NOTE ON SECRETARIAL AUDIT

- (iii) fully convertible debentures,
- (iv) partly convertible debentures,
- (v) any other security which would be convertible into equity shares at a later date.

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

S. No.	Particulars	Remarks
1	<p>Existing equity shareholders in proportion to the paid up share capital held by them.</p> <p>Check whether the Company has followed the following procedure:</p> <p>(a) Letter of offer to be sent to existing equity shareholders as notice by registered post/ speed post / electronic mode or courier or any other mode having proof of delivery at least 3 days before opening of the issue.</p> <p>(b) Contents of letter of offer :</p> <ol style="list-style-type: none"> 1. Specify number of shares offered 2. time limit of minimum 15 and maximum 30 days from date of offer within which the offer if not accepted, would be deemed to have been declined (in case of private company, the period lesser than this shall apply, if 90% of members have given then consent 3. offer to include a right exercisable by person concerned to renounce the shares offered to him in favour of any other person unless the articles provide otherwise <p>In case 90% of the members of a private company have given their consent in writing or in electronic mode, the period lesser than those specified in said sub clause or sub section shall apply.</p> <p>(c) On expiry of period / renunciation, Board may dispose of the shares in a manner not disadvantageous to the company and the shareholders.</p> <p>(d) Check whether the allotment was made within 60 days from the date of receipt of the share application money to comply with Companies (Acceptance of Deposits) Rules, 2014.</p> <p>In case of any preferential offer made by a company to one or more existing members only, the provisions of sub-rule (1) and proviso to sub-rule (3) of rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply. Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 deals with private placement.</p>	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
2	Employees under ESOP Scheme; subject to prior special resolution and the conditions specified in Rule 12 of the Companies (Share Capital and Debenture) Rules, 2014. In case of private limited company, passing of ordinary resolution is sufficient.	
3	Any persons: (1) subject to prior special resolution; (2) either for cash or for consideration other than cash, (3) if price is determined by valuation report of registered valuer.	

Checked by:

Reviewed by:

Date:

Date:

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

Indicative list of documents to be checked:

- Minutes of Board Meeting
- Copy of notice of offer of shares
- Articles of Association
- Valuation Report
- Intimation to accept /decline the shares offered
- Special / ordinary Resolution to offer of shares to employees under ESOP and minutes thereof
- Scheme of employee stock option
- Special Resolution for offering the shares to any other persons and minutes thereof.
- PAS-3, MGT-14

L. Checklist for compliances about Employee Stock Option under Companies Act, 2013 and Rules made thereunder

Unlisted public companies

The Companies Act, 2013 lays down the provisions for issue of employee stock option under section 62 (1)(b) and rule 12 of the Companies (Share Capital and Debentures) Rules, 2014. A PCS is required to verify the following:

S. No.	Particulars	Remarks
1	Whether the company has passed the special resolution as required	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	under section 62 (1) (b) of the Companies Act, 2013.	
2	If passed, check whether the special resolution provide the classes of employees entitled to participate in the Employees Stock Option Scheme; Check whether such employees are within the meaning of 'employee' as given in explanation to Rule 12(1) of Companies (Share Capital and Debentures) Rules, 2014.	
3	Check whether special resolution has been filed with ROC in Form No. MGT.14 as per Companies (Management and Administration) Rules, 2014.	
4	Check that the explanatory statement to the notice of the meeting contains the disclosures required to be made under the sub-rule (2) of rule 12 of Companies (Share Capital and Debentures) Rules, 2014.	
5	Check that the Director's Report contains the disclosures required to be made in such report under sub-rule (9) of the rule12 of Companies (Share Capital and Debentures) Rules, 2014.	
6	Verify the Register of Employee Stock Options maintained in Form No. SH.6 of Companies (Share Capital and Debentures) Rules, 2014 and that the register is duly authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.	
7	Check that the Independent Directors, if any, are not allotted any Stock options.	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked:

- Minutes of Board Meeting/Committee meeting
- Special Resolution approving ESOP along with explanatory statement
- Minutes of General meeting
- ESOP Scheme
- Board's Report

COMPLIANCES UNDER COMPANIES ACT, 2013

- Register of Employee Stock Option (Form SH-6)
- PAS-3, MGT-14

M. Checklist for Register of Employee Stock Option (Section 62(1)(b)) [Rule 12 of Companies (Share Capital and Debentures) Rules, 2014]

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

Checked by:

Reviewed by:

Date:

Date:

N. Checklist for Issue of Bonus Share

S. No.	Particulars	Remarks
1	Whether Bonus issue is authorised by its articles	
2	Whether the bonus is declared only out of a. Free reserves b. Securities Premium Account c. Capital Redemption Reserve Account and not out of revaluation reserve created out of revaluation of assets.	
3	Whether it has, on the recommendation of the Board, been authorised in the general meeting of the company;	
4	Whether the company has defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;	
5	Whether it has defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
6	Whether the partly paid-up shares, if any outstanding on the date of allotment, have been made fully paid-up;	
7	Check whether the company which has once announced the decision of its Board recommending a bonus issue does not subsequently withdraw the same; Check that the entries are made in the Register of Members	
8	Check whether Return of allotment is filed with the registrar in Form No. PAS.3 within 30 days.	
9	Check that bonus share are not issued in lieu of dividend	
10	Check that company has not withdrawn the decision of board for bonus issue once it is announced.	
11	Check that the certificates are issued in the period allowed under section 56	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked:

- Articles of Association
- Minutes of Board Meeting
- Minutes of General meeting
- Register of members
- Auditor's Report
- PAS-3, MGT-14

O. Checklist for Notice for Alteration of Share Capital (Section 64)

S. No.	Particulars	Remarks
1.	Articles of Association contain the power to alter share capital.	
2.	Check if the alteration is an effect of any other even mentioned under section 63.	
3.	Company has filed a notice with the registrar within a period of thirty	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	days of such alteration along with altered memorandum.	
4.	The notice is in Form No. SH.7 of the Companies (Share Capital and Debentures) Rules, 2014 and filed within a period of 30 days.	
5.	The effect of alteration is noted in every copy of the Memorandum and Articles of Association of the company.	

Checked by:

Reviewed by:

Date:

Date:

P. Reduction in Share capital (Section 66)

The Reduction in the share capital of the company is subject to the confirmation by the tribunal, hence, it is advised to have an bird eye views on the correspondence and various communication and order of the tribunal.

Q. Buy-back of Shares/Securities (Section 68)

S. No.	Particulars	Remarks
1	Check whether the Articles of association authorize buy back of shares or other specified securities.	
2	Check whether the buy back is not made out of the proceed of an earlier issue of the same kind of share/ securities	
3	The offer for buy back is not made within 1 year of closure of preceding offer of buy back.	
4	In case, buy back of securities are up to 10% of total paid up equity capital & free reserves (Including Securities Premium Account), whether a board resolution was passed authorizing the buy-back.	
5	A special resolution has been passed in general meeting, authorizing the board to buy-back. (Note: This is not applicable in case the buy- back is ten percent or less of the paid up capital and free reserves of the company)	
6	Check whether the buyback is twenty five percent or less of the aggregate of paid up capital and free reserves.	
7	Check whether the post buy back ratio of aggregate of secured and unsecured debt owed by the company is not more than twice the paid	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	up capital and free reserve.	
8	The explanatory statement is required to be annexed to the notice of general meeting pursuant to section 102 contains the disclosures mentioned in the rule 17 (1) of the Companies (Share Capital and Debentures) Rules, 2014 in this behalf.	
9	After passing of special resolution but before buy-back, the letter of offer has been filed with RoC in Form No. SH.8 with the requisite fee.	
10	The letter of offer has been dated and signed on behalf of the board by not less than two directors of the company, one of whom shall be the managing director, where there is one.	
11	Check that the offer of buy-back has remained open for a period of not less than fifteen days and not exceeding thirty days from the date of dispatch of the letter of offer unless any lesser period has been agreed by the members.	
12	Check that the verification of offers and communication by the company has been made within the prescribed period.	
13	The shares or other securities so bought back are extinguished and physically destroyed within seven days of the completion of buy-back.	
14	The declaration of solvency required pursuant to section 68 (6) of the Companies Act, 2013 has been filed in Form No. SH.9 as per Companies (Share Capital and Debentures) Rules, 2014 with RoC.	
15	The declaration of solvency has been signed and verified by at least two directors, one of whom shall be the managing director of the company, if any.	
16	The company maintains a register of shares or other securities which have been bought back in Form No. SH. 10 as per Companies (Share Capital and Debentures) Rules, 2014.	
17	The company has filed a return within 30 days of completion of buy-back in Form No. SH.11 as per Companies (Share Capital and Debentures) Rules, 2014 with RoC and in case of a listed Company with the Securities and Exchange Board of India.	
18	The certificate of compliance in Form No. SH.15 signed by two directors of the company including the managing director, if any, and verified by Company Secretary in Practice is annexed to the return	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	filed with RoC in Form No. SH.11.	
19	Buy back of any kind of shares or other specified securities has been made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.	
20	The company has not issued shares of the same kind within a period of 6 months except by way of bonus issue or discharge of subsisting obligation.	
21	Check whether securities have been physically destroyed within 7 days of the last date of completion of buy back.	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked:

- Articles of Association
- Minutes of Board meeting
- Minutes of General meeting
- Notice authorising buy-back along with explanatory statement
- Letter of offer (SH-8)
- Declaration of Solvency (SH-9)
- Register of shares/other securities bought back (SH-10)
- Return of Buy-back (SH-11)
- Certification of Compliance (SH-15)
- MGT-14
- Relevant register of securities holders
- Financial Statement

R. Return on Buy-Back of Securities (Section 68)

S. No.	Particulars	Remarks
1	The buy back of securities has been in accordance with section 68 read with rule 17 of the Companies (Share Capital and Debentures) Rules, 2014.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
2	The buy-back of securities has been authorized by a special resolution passed in general meeting.	
3	The company has filed the Letter of Offer in Form No.SH-8 in accordance with the Companies (Share Capital and Debentures), Rules, 2014, with the Registrar	
4	The company has filed the Declaration of Solvency in Form No. SH-9 in accordance with the Companies (Share Capital and Debentures), Rules, 2014 with the Registrar along with the Letter of Offer. In case of Listed company, the Letter of Offer has also to be filed with SEBI.	
5	The Declaration of Solvency is signed by two directors, one of whom shall be Managing Director, where there is one and is verified by an affidavit.	
6	The Declaration of Solvency is signed by two directors, one of whom shall be Managing Director, where there is one and is verified by an affidavit.	
7	The Letter of Offer is dispatched to the security holders not later than twenty days from its date of filing with the Registrar. For this purpose, the proof of dispatch may be verified.	
8	The company has maintained a Register of Securities bought back in Form No. SH-10 and the entries therein have been authenticated by the Company Secretary or by any other person authorized by the Board.	
9	The company has, after the completion of the buy-back, filed with the Registrar and where it is a listed company, with SEBI, a return on buy-back in Form No. SH-11 as per the Companies (Share Capital and Debentures) Rules, 2014 within 30 days of such completion.	
10	A certificate in Form No. SH.15 signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder was attached with the return.	
11	If the books and records are maintained in the electronic form, check whether the provisions of Rule 27 of Companies (Management and Administration) Rules, 2014 are complied with	

Checked by:

Reviewed by:

Date:

Date:

COMPLIANCES UNDER COMPANIES ACT, 2013

S. Register of shares or other securities bought-back (Section 68)

S. No.	Particulars	Remarks
1	The Register of Shares or other securities bought back by the company is maintained in Form No. SH.10 in accordance with Companies (Share Capital and Debentures) Rules, 2014.	
2	The register is maintained at the registered office of the company.	
3	The custody of the register is with company secretary of the company or any other person authorised by the Board in this behalf.	
4	The entries in the register are authenticated by the secretary of the company or by any other person authorized by the Board.	

Checked by:

Reviewed by:

Date:

Date:

T. Checklist for Debentures (Section 71)

S. No.	Particulars	Remarks
1	Check whether the issue of debenture is approved by a Special Resolution passed at a general meeting. Check that the special resolution is filed in form MGT-14.	
2	Check that the debenture does not carry any voting rights.	
3	An issue of secured debentures may be made, provided the date of its redemption does not exceed ten years from the date of issue. A company engaged in the setting up of infrastructure projects Infrastructure Finance Companies, Infrastructure Debt Fund Non-Banking Financial Companies, Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years may issue secured debentures for a period exceeding ten years but not exceeding thirty years [Rule 18(1) of Companies (Share capital and Debentures) Rule. 2014.	
4	Check whether form PAS-3 is filed as a return of allotment of debentures within a period of 30 days.	
5	In case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	or more State Government or by both, the requirement for creation of charge shall not apply.	
6	Check whether a charge is created on properties or assets of the company or its subsidiaries or its holding company or its associates companies. Check whether value which is sufficient for the due repayment of the amount of debentures and interest thereon.	
7	Company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption and shall be approved by a special resolution passed at a general meeting.	
8	The company has appointed a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures to public or to its members exceeding five hundred.	
9	Check whether the Debenture trustee shall not have any disqualification as mentioned in rule 18(2)(c) of Companies (share capital and Debentures) rule, 2014.	
10	A trust deed in Form No. SH. 12 or as near thereto as possible has been executed by the company issuing debentures in favour of the debenture trustees within three months of closure of the or offer. Check that the trust deed is open for inspection to any member or debenture holder and a copy of the same is forwarded to every member or debenture holder upon his request.	
11	The company has created a Debenture Redemption Reserve for the purpose of redemption of debentures in accordance with the conditions specified in sub rule (7) of rule 18 of the Companies (Share Capital and Debentures) Rules, 2014.	
12	Check that the amount required to be invested or deposited as specified in Rule 18 (7) (c) is deposited before 30 th day of April.	
13	Check that the payment of interest on the debentures is being made as per the terms and conditions of their issue.	

Checked by:

Reviewed by:

Date:

Date:

Note:

In case, any amount received by a company against issue of commercial paper or any other similar instrument issued in accordance with the guidelines or regulations or notification issued by the Reserve Bank of India, Rule 18 shall not apply.

COMPLIANCES UNDER COMPANIES ACT, 2013

In case of any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations or directions issued by the Reserve Bank of India, Rule 18 shall not apply, unless otherwise provided in such Scheme or regulations or directions.

Indicative list of documents to be checked:

- Minutes of Board Meeting
- Notice along with explanatory statement
- Minutes of General meeting
- Charge documents
- Prospectus or letter of offer for subscription of debentures
- Written consent from debenture trustee
- Requisition signed by debenture holders for meeting
- Trust deed (SH-12)
- Financial Statement
- MGT-14
- Form PAS-3 as return of allotment

IV. ACCEPTANCE OF DEPOSITS

Section 73 to Section 76A of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

Eligible Company:

"eligible company" means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits:

Exemption Applicability of Section 73(2)

Clause (a) to (e) of Sub-section 2 of Section 73 shall not apply to private Companies:

(A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; or

(B) which is a start-up, for five years from the date of its incorporation; or

(C) which fulfils all of the following conditions, namely:-

- (a) which is not an associate or a subsidiary company of any other company;

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- (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
- (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

A. Checklist for Acceptance of Deposits (Section 73 to 76A)

S. No.	Particulars	Remarks
1	Check whether the company has accepted any unsecured loans which are exempted deposits and have followed the necessary provisions in respect thereof in order to avail the exemption. If not, then the same will be treated as Deposits.	
2	The Company has not accepted any deposits which are repayable on demand or upon receiving a notice within a period of less than six months or more than 36 months from the date of acceptance or renewal of deposit. If, so accepted, the company has complied with the conditions prescribed in rule 3 of the Companies (Acceptance of Deposits) Rules, 2014.	
3	The company referred to in section 73(2) has passed a resolution in General Meeting and issued circular to all its members by registered post acknowledgement due or speed post or by electronic mode in Form No. DPT-1, while intending to invite deposits from them.	
4	The company referred to section 76, being an eligible Company as defined under the Rules, has issued circular in the form of advertisement in Form DPT-1.	
5	The form of application contains a declaration by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.	
6	Whether the company filed Return of deposits with the Registrar in Form No. DPT-3.	
7	Whether the company referred in section 73(2) has accepted or renewed any deposit from its members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits is in excess of 35 % of the aggregate of the paid up share capital, free reserves and securities premium account of the company.	
8	Whether a private company has accepted from its members monies not exceeding 100% of aggregate of the paid up share	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	capital, free reserves and securities premium account has filed the details of monies so accepted to the Registrar as well disclosed the same in the Board's report.	
9	<p>In case of the eligible company check whether</p> <p>a. The deposits from members has not exceeded ten per cent. of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company;</p> <p>b. any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal has not exceeded twenty-five per cent. of aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.</p>	
10	Whether every eligible company has obtained atleast once a year, credit rating for deposit accepted by it and a copy of the rating has been sent to the Registrar of Companies along with the return of Deposit in Form DPT-3.	
11	Whether the Company has obtained the Credit rating and whether the credit rating is reasonable for acceptance of deposits.	
12	The company has provided for security by way of charge as prescribed in Rule 6, where there are secured deposits.	
13	The company has executed deposit trust deed in Form No. DPT-2 at least seven days before issue of circular or advertisement, in case of secured deposits.	
14	Whether the company has maintained the amount as required under Section 73 and Deposit Rules, in liquid form and created the deposit repayment reserve account.	
15	Whether company, other than a private company, has disclosed in its financial statement, by way of notes, about the money received from the director and every private company has disclosed in its financial statement, by way of notes, about the money received from the directors or relatives of directors.	
16	Whether the company has received any amount which is considered as deposit under the definition of Deposit.	
17	Whether the Trustee for depositor is an eligible person in term of	

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S. No.	Particulars	Remarks
	Rule 7(3) of the Companies (Acceptance of Deposits) Rule, 2014	
18	Whether the company has passed a board resolution for borrowings and also approved the circular of advertisement of deposits.	
19	In case of a Private company whether the company has passed a special resolution where the limit of acceptance of deposits has been exhausted.	
20	Whether the company has filed the necessary forms, for filing of board resolutions/ special resolution and the circular of advertisement with the ROC.	
21	Whether the company has issued the necessary fixed deposit receipt to the respective deposit holders.	
22	In case of repayment of deposits, whether the company has complied with as per the repayment schedule and repaid the amounts of deposits accepted as per the scheme for acceptance of deposits.	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked

- Circulars inviting deposits (DPT- 1)
- Newspaper clippings
- Minutes of board meetings
- Contract of deposit insurance
- Instrument creating charge
- Written consent from trustee for depositors
- Deposit trust deed (DPT-2)
- Written requisition calling meeting of depositors
- Application form for deposits
- Receipts of amount received by company
- Register of deposits
- Return of deposit (DPT-3)
- Statement regarding deposits (DPT-4)

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- Financial statement
- Credit Rating

B. Checklist for Return of Deposits

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

Checked by:

Reviewed by:

Date:

Date:

V. REGISTRATION OF CHARGES

Section 77 to Section 87 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

- Registration of Charge
- Modification of Charge
- Satisfaction of Charge
- Rectification of Charge

GUIDANCE NOTE ON SECRETARIAL AUDIT

Checklist for Charges

S. No.	Particulars	Remarks
1	<p>Check whether the Board of Director has been authorized under section 180(1)(c) of the Companies Act, 2013.</p> <p>If yes, whether the borrowing of the company is within the limit approved by the shareholders.</p>	
2	<p>The company has registered the particulars of creation or modification of charge with the Registrar within thirty days of its creation or modification or within the extended period after payment of additional fees;</p> <p>[Form No.CHG-1 (for other than Debentures) or Form No.CHG-9 (for debentures including rectification of particulars)].</p>	
3	<p>The copy of every instrument evidencing any creation or modification of charge required to be filed with the Registrar has been attached and verified as per Rule 3(4) of the Companies (Registration of Charges) Rules, 2014.</p>	
4	<p>The company has reported satisfaction of charge to the Registrar within the period of thirty days from its payment/satisfaction in Form No.CHG-4 and obtained certificate of registration of satisfaction of charge in Form CHG-5.</p>	
5	<p>The notice of appointment or cessation of a receiver of, or of a person to manage, the property, subject to charge, of a company has been filed with ROC in Form No. CHG-6.</p>	
6	<p>The company has maintained the register of charges in Form No. CHG -7.</p>	
7	<p>The application for condonation of delay, if any, has been filed with the Central Government in Form No.CHG-8.</p>	
8	<p>The order passed by Central Government w.r.t. condonation of delay has been filed with the ROC in Form No.INC-28.</p>	

Checked by:

Reviewed by:

Date:

Date:

COMPLIANCES UNDER COMPANIES ACT, 2013

Indicative list of documents to be checked

- Minutes of Board Meeting
- Instrument creating / modifying charge (CHG-1 or CHG-9)
- Application for delay (CHG-1)
- Certificate of Registration (CHG-2)
- Certificate of modification (CHG-3)
- Register of charge
- Satisfaction of charge (CHG-4)
- Certificate of registration of satisfaction (CHG -5)
- Notice of appointment/ Cessation of securities (CHG-6)
- Copy of filing of order (INC-28)
- Register of charges (CHG-7)
- Application for Condonation of delay (CHG-8)\

Check list for Register of charges (CHG-7)

S. No.	Particulars	Remarks
1	The company has maintained register of charges as per Form CHG.7 in accordance with the Companies (Registration of Charges) Rules, 2014.	
2	The register contains particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company.	
3	The register contains the particulars of the property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.	
4	Entries in the register are authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.	
5	The register is maintained at the registered office of the company and is preserved permanently	

Checked by:

Reviewed by:

Date:

Date:

GUIDANCE NOTE ON SECRETARIAL AUDIT

VI. CHECKLIST FOR MANAGEMENT AND ADMINISTRATION

Section 88 to Section 122 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

- Register of Members
- Declaration of Beneficial Interest
- Register of significant beneficial owners
- Closure of Register of members
- Annual Return
- Inspection of Registers and returns
- Annual General meeting
- Extra ordinary general meeting
- Notice of the meeting
- Explanatory statement
- Quorum
- Chairman
- Voting by electronic means
- Postal Ballot
- Resolution by Circulation

A. Checklist for Register of Members/ Debenture holders/ Other security holders (Section 88)

S. No.	Particulars	Remarks
1	In case of Company limited by share check whether the company has maintained the register of members as per Form No. MGT.1.	
2	In case of Company not having share capital, The Register contains such particulars as mentioned in Rule 3 (2) rules.	
3	The company maintains register of debenture holders or any other security holders as per Form No.MGT.2.	
4	Check Whether the Registers are maintained at the Registered office of the Company. If the same is maintained at the RTA, check if the company has passed necessary resolution to that effect.	
5	Whether the entries in the register has been made with in	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	Seven days of the approval of the committee or Board of Directors.	
6	If the aforesaid registers are maintained at some other place in India in which more than one-tenth of the total members entered in the register of members reside or some other place within the city, town or village where registered office is situated, whether a special resolution has been passed.	
7	Whether the index of members is maintained by the company, when the number of member is equal to or more than fifty.	
8	Whether the change occurred due to corporate action/ transfer of shares has been incorporated within seven days of such change approved by the board.	
9	Whether the rectification made pursuant to order of a competent authority is indicated in the register of members.	
10	In case of the listed companies, the particulars of pledge, charge, lien or hypothecation by the promoters shall be indicated.	
11	In case of Foreign Registers, check whether: The Articles of the company authorises maintenance of the foreign register.	
12	The company has within thirty days from the date of the opening of any foreign register, filed with the Registrar notice of the situation of the office where such register is kept in Form No.MGT.3 in accordance with the Companies (Management and Administration) Rules, 2014.	
13	Notice of every change is incorporated in the aforesaid register or its discontinuance is filed with registrar within thirty days in Form No. MGT. 3.	
14	The company maintains a duplicate register at its registered office and changes are duly incorporated from time to time.	
15	The entries are authenticated by the company secretary of the company or person authorised by the Board by appending his signature to each entry.	

Checked by:

Reviewed by:

Date:

Date:

GUIDANCE NOTE ON SECRETARIAL AUDIT

B. Checklist for Declaration of Beneficial Interest:

S. No.	Particulars	Remarks
1	The company has made a note of the declaration received in form MGT. 4 & MGT 5, w.r.t. beneficial interest in any shares, in the register of members.	
2	The company has filed form No. MGT.6 with the Registrar within a period of thirty days from the date of receipt of aforesaid declaration.	

Checked by:

Reviewed by:

Date:

Date:

C. Checklist for Closure of Register of Members:

S. No.	Particulars	Remarks
1	Check whether the register of members or the register of debenture – holders or the register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time.	
2	Whether the previous notice of at least seven days has been given by the company.	
3	Whether the notice has been given by way of an advertisement at least once in a vernacular newspaper and once in English language in an English newspaper within the jurisdiction in which the registered office of the company is situated and also published the notice on the website as required in rule.	

Checked by:

Reviewed by:

Date:

Date:

D. Checklist for particulars of Beneficial Interest in Shares (Section 89)

S. No.	Particulars	Remarks
1	The company has received the declaration from the member/beneficial owner in the prescribed form MGT-4/MGT-5.	

COMPLIANCES UNDER COMPANIES ACT, 2013

2	Such declaration is noted in the register of members.	
3	The company has filed within 30 days of the receipt of the declaration, a return in Form No.MGT.6 as per Companies (Management and Administration) Rules, 2014 with the Registrar in respect of such declaration with fee.	

E. Checklist for Annual Return filed by the Company:

Note: For detailed checklist of the filing of the Annual Return, it is advised to refer the Guidance note of Annual Return.

S. No.	Particulars	Remarks
1	The company has filed annual return within sixty days from the date of holding of the annual general meeting (AGM).	
2	Where no AGM is held in any year, the annual return has been filed within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, if the annual general meeting.	
3	The annual return is prepared in Form No. MGT.7 referred to in Rule 11 of the Companies (Management and Administration) Rules, 2014.	
4	The annual return has been signed by a director and the company secretary.	
5	In case company does not have a company secretary, the annual return has been signed by a director and Company Secretary in practice.	
6	In case of a listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, the annual return has been certified by a Company Secretary in practice and the certificate is in Form No. MGT.8 of aforesaid rules.	
7	Whether the company has placed a copy of annual return on website of the company, if any and the web link of such annual return shall be disclosed in the Boards Report.	

Checked by:

Reviewed by:

Date:

Date:

GUIDANCE NOTE ON SECRETARIAL AUDIT

F. Notice, Conduct of the Annual General Meeting and Minutes

S. No.	Particulars	Remarks
1	<p>Check whether the AGM is held before the due date of AGM.</p> <p>The first AGM is held within a period of nine months from the date of closing of the first financial year of the company.</p> <p>Subsequent AGM was held in each case, within a period of six months from the date of closing of the financial year.</p> <p>The provisions of Section 91 of the Companies Act read with Companies (Management and Administration) Rules, 2014. Listing Regulations if applicable have been complied with.</p>	
2	The meeting was held within 15 months of the last annual general meeting.	
3	Check whether the extension for holding the meeting was obtained from the Registrar, where applicable.	
4	AGM was called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.	
5	The AGM was held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated or in case of unlisted company, it may be held at any place in India, if consent is given in writing or electronic mode by all members in advance.	
6	<p>Notice:</p> <p>Check whether the Notice of AGM was given before 21 clear days from the date of meeting.</p>	
7	In case of shorter notice, check whether the company has received the consent of members in writing or electronic mode has been received from not less than 95 percent. of members entitled to vote at the meeting.	
8	Notice convening the meeting specifically mentioned that it was AGM.	
9	Whether the notice contains any special business other than the ordinary business.	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
10	In case Company does not provide facility for E voting, Check whether the notice does not contain any business which is to be dealt by Postal Ballot only.	
11	Whether Attendance Sheet, Proxy Form and Route Map of the Company has been annexed with every copy of the Notice.	
12	Day, Date and hour of the meeting were mentioned in the notice along with the statement of business to be transacted.	
13	Notice was given to every member/ assignee of insolvent member/legal representative of the deceased member, Auditor, Director of the company.	
14	In case the company has given notice of the AGM through e mail the following items shall be verified: <ol style="list-style-type: none"> 1. Whether the company has provided opportunity to the members at least once in a financial year to register and update their e mail. 2. Whether the subject line of the email state the name of company, notice of the type of meeting, place and date on which meeting is scheduled. 3. Whether the notice of the general meeting was simultaneously placed on the website of the company. 	
15	Explanatory statement setting out material facts of all the proposed resolution, (as required) was attached to the notice in respect of special business as contemplated by section 102	
16	Whether the explanatory statement contain the nature of concern or interest, financial or otherwise of Director, Manager, KMP and relatives along with the share holding in other company as required under section 102.	
Quorum		
17	Check whether the requisite quorum was present at all the general meeting held during the year including Annual General Meeting.	
18	If meeting was adjourned for want of quorum, section 103(2) was complied with.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
19	In case of requisitioned meeting, provisions of section 100 read with rule 17 of the Companies (Management and Administration) Rules, 2014 were complied with.	
Chairman		
20	The provisions of the articles as to Chairman were complied with.	
21	Proxies: None of the proxies represented more than 50 members and holding in aggregate not more than 10% of the total share capital of the Company carrying voting rights.	
22	Appropriate statement in respect of proxies appeared in the notice.	
23	Instrument of proxy was in the prescribed form, in writing and signed by the appointer or in case of body corporate be under its seal and signed by the officer of the company.	
24	Inspection of Proxy register was offered to the members within 24 hours before the meeting as well as during the meeting.	
25	None of the members was prevented from voting except where company had exercised its right of lien/ calls were due, as provided under the Articles of association of the Company.	
26	Whether the company is required to conduct voting by electronic means if Yes; Whether the voting was carried out in compliance with rule 20 of the Companies (Management and Administration) Rule 2014.	
27	Whether the voting is done by Show of hand, if yes 1. Whether the poll was demanded by any eligible member of the company, 2. Whether the Poll was conducted in compliance with section 109.	
28	Postal Ballot: Whether postal ballot was conducted in compliance with the	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	provisions of section 110 read with Rule 22 of the Companies (Management and Administration) Rule 2014	
29	Circulation of Members Resolution : Whether the company has received the requisition for the circulation of ant resolution from the members.	
30	If yes, Whether the requisition was made by the eligible members as required under section 100.	
31	If yes, whether the Members' resolution were circulated in compliance with section 111.	
Resolution requiring Special Notice		
32	Check whether the article of the company provides for matters which require special notice. Whether the company has moved any resolution which require special notice under the article of the company or under the Companies Act, 2013 Whether such resolution have backing of members holding atleast 1% of the voting power/holding shares of not less than Rs. 5,00,000.	
Report on Annual General Meeting:		
33	In case of listed company Check whether the Report of Annual General Meeting was filed in Form MGT 15 by all the listed public companies within 30 days of the conclusion of AGM.	
34	The report is duly signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked:

- Minutes of Board Meetings.
- Notice of Annual General Meetings.

GUIDANCE NOTE ON SECRETARIAL AUDIT

- Register of members
- Register of Proxies.
- Attendance Register.
- Application for extension of date of holding AGM, if any
- Approval of extension of date to hold AGM from ROC.
- Proof of sending notice.
- Advertisement regarding Book Closure.
- Filings with stock exchange.
- Minutes of AGM & report of AGM.

G. Checklist for Registration of Resolutions and Agreements (Section 117)

Special resolution

The illustrative list of resolutions required to be filed with ROC are as under:

Section		Particulars
5(4)	Articles	Inclusion of Entrenchment provisions in the articles of association of a public company
12(5)	Registered office of the Company	Change of the registered office outside the local limits of any city, town or village where such office is situated.
13(1) & (8)	Alteration of and memorandum	Alteration of the memorandum of the company to change the objects for which the money has been raised from public through prospectus and still has any unutilized amount out of the money so raised.
14	Alteration of articles	Alteration of any clause of the articles.
27(1)	Variation in terms of contract or the objects in prospectus	Variation in terms of contract referred to in the prospectus or objects for which prospectus was issued.
41	Global depository receipt	Issuance of depository receipts in any foreign country.
48(1)	Variation of shareholders rights	Variation of the rights attached to the shares of any class.
54	Issuance of sweat equity	Issuance of sweat equity shares of a class of shares

COMPLIANCES UNDER COMPANIES ACT, 2013

Section		Particulars
	shares	already issued.
62(l) (b)/(1) (c)/(3), proviso	Further issue of share capital	Issue of further shares to employees under a scheme of employees' stock option. Issue of further shares to any person whether or not those persons include the existing members or employees for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer.
		For approving the terms of issue of debentures or loan containing an option to convert such debentures or loans into shares.
66	Reduction of share capital	Reduction of share capital subject to the confirmation of the Tribunal.
67(3)(b)	Restriction on purchase by company or giving of loans by it for purchase of its shares	Approving any scheme for the purchase of, or subscription for, fully paid up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company.
68	Power of company to purchase its own securities	Buy back of securities.
71	Debentures	Issue of debentures with an option to convert whole or part of the debentures into shares at the time of redemption.
94	Place of keeping and inspection of registers, returns, etc.	To keep registers, returns etc., at any other place than the registered office, where more than one-tenth of the total number of members reside
140	Removal, of auditors	Removal of the auditor before the expiry of his term after obtaining the previous approval of the Central Government
149(1), proviso/ (10)	Company to have Board of directors	Appointment of more than fifteen directors by a company Re-appointment of an independent director after expiry of a term of five consecutive years.

GUIDANCE NOTE ON SECRETARIAL AUDIT

Section		Particulars
165(2)	Number of directorships	Specifying number of companies (10/20) in which director of the company may act as director.
180	Restrictions on powers of Board	Certain powers to be exercised by the Board of directors only with the consent of company
185	Loan to directors, etc.	Approving a scheme pursuant to which any loan may be given to a managing or whole - time director
186	Loan and investment by company	Giving of any loan or guarantee or providing any security or the acquisition exceeds the limits of sixty per cent. of its paid- up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.
196	Appointment of managing director, whole time director or manager	Appointing the person as a managing director, whole-time director or manager who has attained the age of 70 years.
371	Effect of registration under this Part	To adopt table F in schedule I, if required

Resolution which have been agreed by all the members but which, if not so agreed to, would not have been effective unless passed as special resolutions

- (a) Board Resolution /agreement relating to appointment, re-appointment or renewal of the appointment, or variation in the terms of appointment of managing director
- (b) Resolution passed by class of members
- (c) Members' resolutions authorising the board to exercise powers under section 180(1)(a) &(c)
- (d) Board resolutions for exercising following powers:
 - Make call
 - Buy back of securities
 - Issuing securities
 - Borrowing monies
 - Investing funds
 - Granting loans/ giving guarantees/providing securities
 - Approving financial statement and Board's report

COMPLIANCES UNDER COMPANIES ACT, 2013

- Diversifying business
- Approving amalgamation/merger/ reconstruction
- Taking over of a company/acquiring control in substantial stake in another company)
- Making political contributions
- Appointing or removing KMP
- Appointing internal auditor
- Appointing secretarial auditor

G. Checklist for Report on Annual General Meeting (Section 121)

S. No.	Particulars	Remarks
1	In case of a listed company, it has filed with the Registrar in Form No. MGT.15 of the Companies (Management and Administration) Rules, 2014 the report on the AGM, within thirty days of the conclusion of the annual general meeting.	
2	The report is duly signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.	

H. Checklist for Minutes Book of Meetings [Section 118 and Rule 25 of the Companies (Management and Administration) Rules, 2014

S. No.	Particulars	Remarks
1	Minutes book has been maintained in respect of: <ol style="list-style-type: none"> 1. General meetings of the members; 2. Meetings of the creditors. 3. Meetings of the Board; and 4. Meetings of each of the committees of the Board. Resolutions passed by postal ballot are recorded in the minute book of general meetings. 	
2	The pages of the minutes book have been consecutively numbered.	
3	Each page of minutes of proceedings of a meeting of the Board or of a committee thereof is initialed or signed and the last page of the record of proceedings of each meeting is dated and signed by the chairman of the said meeting or the chairman of the next succeeding meeting.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
4	Each page of minutes of proceedings of a general meeting is initialed or signed and the last page of the record of proceedings of each meeting is dated and signed by the chairman of the same meeting within the aforesaid period of thirty days.	
5	Each page of the minute books of general meeting in respect of every resolution passed by postal ballot is initialed or signed and the last page dated and signed by the Chairman of the Board within thirty days or in the event of there being no Chairman of the Board or the death or inability of that Chairman within that period, by a director duly authorized by the Board for the purpose.	
6	The minute books of general meetings, and the minutes books of the Board and committee meetings are maintained in the custody of the company secretary or any director duly authorised by the board.	
7	In case of a company other than a company referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 having its equity shares listed on a recognised stock exchange or a company having not less than one thousand members, whether the company has provided e-voting facilities to its members to exercise their vote at general meetings and if so, whether Rule 20 of the Companies (Management and Administration) Rules, 2014 has been complied with.	

IV. DECLARATION AND PAYMENT OF DIVIDEND

Section 123 to Section 127 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

- Declaration and Payment of Dividend
- Unpaid Dividend Accounts

Checklist for Declaration and Payment of Dividend

S. No.	Particulars	Remarks
1	Whether the company has voluntarily observed the Secretarial Standards on Dividend. (SS-3)	
2	Whether the company has failed to comply with the provisions of Section 73 and 74 of the Companies Act, 2013.	
3	Whether the company has adequate profits to declare dividend.	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
4	Check whether the company has not declared and paid any dividend from reserves other than free reserves as defined in section 2(43).	
5	Check whether carried over previous losses and depreciation not provided in previous year(s) are set off against profits of the Company of the current year.	
6	In case of inadequate profit, whether the company has declared dividend in accordance with Rule 3 of the Companies (Declaration of Dividend) rule, 2014	
7	In case of inadequate profits or absence of profits, and the dividend is declared out of reserves, the rate of dividend declared has not exceeded the average at the rates at which dividend was declared by it in the three years immediately preceding that year	
8	The company has before declaration of dividend transferred such percentage of profits to reserves as decided by the board voluntarily.	
9	The company has followed the procedures prescribed in Rule 3 before the dividend is declared out of reserves (as applicable).	
10	Whether the company has declared interim dividend. If Yes, Whether the company has complied with the provisions of Section 123(3) of the Companies Act, 2013.	
11	The amount of dividend, including interim dividend, was deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.	
12	Unpaid Dividend Account Whether the company has paid dividend within 30 days from the date of declaration.	
13	The company has transferred the total amount of dividend which remains unpaid or unclaimed within 30 days from the date of declaration to unpaid dividend account, within seven days from the expiry of the said 30 days.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
14	The company has prepared a statement containing the names and other details to whom the unpaid dividend is to be paid along with the amount of unpaid dividend and place the same on the website of the company and also on any other web-site approved by the Central Government for this purpose, within 90 days.	
15	The dividend is paid by the company by cheque or warrant or by any electronic mode and not in cash.	
16	The company has transferred the amount remaining unpaid or unclaimed for a period of seven years from the date of transfer to the Unpaid Dividend Account to the Investor Education and Protection Fund and has filed the Statement of amounts credited to IEPF in prescribed form.	
17	The company has followed the procedures prescribed in Rule 3 before the dividend is declared out of reserves (as applicable.)	
18	Whether all the shares of which dividend has not been paid or claimed for seven consecutive years or more are transferred to IEPF.	
19	Check whether the company has balance of Application money due for refund, matured debenture, matured deposit etc. as prescribed in section 125 of the companies Act, 2013.	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked

- Statement containing names of unpaid dividends
- Website of company
- Statement of transfer of unpaid dividend A/c to IEPF with receipt
- Financial statement
- Minutes of Board Meeting
- Bank account details of scheduled bank
- Details of payment of dividend
- Details of unpaid dividend account

COMPLIANCES UNDER COMPANIES ACT, 2013

V. ACCOUNTS OF COMPANIES

Section 128 to Section 138 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

- Books of accounts
- Boards Report
- Corporate Social Responsibility

A. Checklist for Accounts of Companies

S. No.	Particulars	Remarks
1	Whether the book of accounts of the Company are kept at the Registered office of the company.	
2	Whether the Board has decided to keep the Book of account any other place in India If yes, whether the notice in writing giving full address of such place is filed with the Registrar.	
3	In case the company is having Subsidiaries or associate Companies, Whether the company has prepared the Consolidated financial statement of the company.	
4	Whether the company has obtained approval for the voluntary revision of financial statements or Boards Report. Revised financial statement or report shall not be prepared or filed more than once in a financial statement.	
5	Whether the financial statements are approved by the Audit committee, board of directors, before signing on behalf of the board and thereafter adopted in the Annual General Meeting.	
6	Check whether the Board resolution for approval of accounts have been filed with the Registrar within 30 days in form MGT 14.	
7	Whether the financial statement are signed by the person authorized by the board or by the two Director of which one should be atleast Managing Director if any, and the CEO, CFO and CS Wherever they are appointed.	

Checked by:

Reviewed by:

Date:

Date:

B. Annual Report containing the financial statements (Section 137)

S. No.	Particulars	Remarks
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GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
1	The company has filed financial statements duly adopted at the annual general meeting of the company, within thirty days of the date of annual general meeting.	
2	The company has filed the financial statements with the Registrar together with Form AOC-4 as per Rule 12(1) of the Companies (Accounts) Rules, 2014.	
3	Whether the company falls in the class of companies notified by the Central Government from time to time to mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format, and if yes, whether it has been filed in such manner.	
4	Financial statements even if not adopted by members have been filed within the 30 days from the date of AGM.	
5	After the holding of adjourned AGM, adopted financial statements are filed within 30 days of the date of adjourned AGM.	
6	Where AGM for any year has not been held, the financial statements duly signed along with the statement of facts and reasons for not holding the AGM, have been filed with the Registrar within thirty days of the last date before which the AGM should have been held.	

C. Checklist for Board's Report:

The following points are the general checklist for the Boards Report, it is advised to check the other requirements as may be specifically applicable to the company.

S. No.	Particulars	Remarks
1	Number of meetings of the Board, including dates of Board and Committees meetings held indicating the number of Meetings attended by each Director.	
2	Directors' Responsibility Statement shall states the following:- (i) Applicable Accounting Standards (ii) Accounting Policies & Records (iii) Preparation of accounting policies on going concern basis (iv) Adequate Internal Financial Controls (v) Compliance with all applicable law	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
3	Declaration by Independent Directors under section 149(6).	
4	Disclosure on Reappointment of Independent Director.	
5	Company's policy on Director's, appointment & remuneration including debentures Qualification, Attributes, Independence of Director, etc.	
6	Explanation or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the Auditors in Audit report. Not applicable to the Government companies.	
7	Secretarial Audit Report	
8	Particulars of Loans, guarantees or investments u/s 186.	
9	Contracts or arrangement with Related Party/ Parties.	
10	State of the company's affairs.	
11	Amounts proposed to be carried to reserves, if any.	
12	Amount recommended as dividend, if any.	
13	Material Changes & Commitments affecting occurring between date of financial position of the Financial Statements & Board Company, occurring Report after Balance Sheet Date.	
14	Energy Conservation Technology absorption, FOREX earnings & outgo, in prescribed manner.	
15	Statement indicating development & implementation of Risk Management Policy.	
16	Details about CSR Committee, Policy, its implementation and initiatives taken during the year.	
17	Manner in which Formal Annual Evaluation of performance of Board, its Committees and individual directors has been carried out.	
18	Company's website if any, any changes in the CSR policy and policy on directors appointment and remuneration is made and given in brief in the Board's Report or not.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
19	Financial Highlights & Change in the nature of business.	
20	Details of Directors/KMP appointed/resigned during the year.	
21	Name of the companies which have become/ceased to be subsidiaries, JVs or Associate companies during the year.	
22	Details of deposits covered under Chapter V of the Act.	
23	Details of significant and material orders passed by the regulators, courts, tribunals impacting the going concern status and company's operations in future.	
24	Details in respect of adequacy of internal financial controls with reference to Financial Statements.	
25	Separate section containing a report on performance and financial position of each of subsidiaries, associates & JVs included in the Consolidated FS of the Company.	
26	Disclosure on establishment of Vigil Mechanism.	
27	Disclosure about receipt of any commission by MD / WTD from a Company also receiving commission / remuneration from it Holding or subsidiary.	
28	Ratio of remuneration of each director to the median employee's remuneration and other prescribed details.	
29	The composition of the Audit Committee Further, if the Board has not accepted any recommendation of the Audit Committee the same shall also be disclosed along with reasons therefore.	
30	Issue of Equity Shares with Differential Rights Sweat Equity, ESOS, etc.	
31	Disclosure in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates.	
32	Corporate Governance disclosure requirements.	
33	Disclosures under Sexual Harassment of Women at Workplace (Prevention, prohibition & redressal) Act, 2013.	
34	Voluntary revision of financial statements.	
35	Check whether the Board's report is signed appropriately as per the board resolution passed by the Board.	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
36	Check whether the Board resolution for approval of accounts have been filed with the Registrar within 30 days in form MGT-14.	

Checked by:

Reviewed by:

Date:

Date:

D. Corporate Social Responsibility

Section 135 of the Companies Act, 2013 provides that every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year.

The list of the various activities which may be included by Companies in their CSR policies are provided in Schedule VII of the Companies Act, 2013.

Checklist for Corporate Social Responsibility

S. No.	Particulars	Remarks
1	Check if the constitution of CSR Committee is applicable to company	
2	If yes, whether the company has constituted Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director is an independent director. Where a Company is not required to appoint an Independent Director under sub-section (4) of 149, it shall have in its Corporate Social Responsibility Committee two or more Directors.	
3	Whether the Company has CSR Policy approved by the CSR Committee. Whether the CSR Committee has recommended list of CSR projects or programme within the purview of schedule VII. Whether the monitoring process of such projects or programme has been established by the company.	
4	The Composition of CSR Committee is disclosed in the Board's Report. Check whether the CSR activities were under taken as per CSR policy and projects, programs or activities excludes activities undertaken in pursuance of its normal course of business	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
5	Corporate social Responsibility Committee has recommended the amount of expenditure to be incurred on the activities referred in the Corporate Social Responsibility policy.	
6	The company has instituted a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.	
7	The company has disclosed the contents of the policy in Board's report and at its website, if any. The Board's report includes an annual report on CSR containing prescribed particulars.	
8	In case the company does not spend the specified amount (i.e. at least two percent of the average net profits made during the three immediately preceding financial years), Board's report specifies the reason for not spending the amount. Check if the Net profits of the Company are in accordance with the provisions section 198 of the Act or not.	
9	In case the company has build CSR Capacities of their own personnel, Check whether the expenditure including expenditure on administrative overheads shall not exceed five percent. of total CSR Expenditure of the company in one financial year.	
10	The company has complied with all other requirement of the CSR Rules.	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked:

- Balance sheet and P&L account
- CSR Policy
- Board Report
- Minutes of Board Meeting
- Minutes of CSR Committee
- Company website, if any.
- Details of expenses towards which amount has been spend under CSR

COMPLIANCES UNDER COMPANIES ACT, 2013

- Company's policy on Directors Appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters.

VI. AUDIT & AUDITOR

Section 139 to Section 148 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

- Appointment of Auditor
- Removal, resignation of Auditor
- Eligibility of Auditors

Section 139(2) of the Companies Act, 2013 provides that, every listed company and the following classes of companies excluding one person companies and small companies shall not re-appoint the auditor after the completion of the terms:-

- (a) all unlisted public companies having paid up share capital of rupees ten crore or more;
- (b) all private limited companies having paid up share capital of rupees fifty crore or more;
- (c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more

Terms for Individual and Firm of Auditor are as under:

For an individual as auditor not more than one term of five consecutive years; and for an audit firm as auditor not more than two terms of five consecutive years.

Checklist for Audit and Auditors:

S. No.	Particulars	Remarks
1	Check whether the Company has complied with provision of section 139(2) of the Act.	
2	Whether the term of the auditor is being completed during the audit period	
3	Whether the fresh appointment of auditor was made at the General meeting of the company.	
4	Whether the company has appointed more than one auditor.	
5	Whether the Certificate of Eligibility and Written consent has been received from the auditor.	
6	Whether the audit committee has recommended the	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	appointment of the auditor.	
7	Whether the company has informed to the auditor for appointment and filed notice of the appointment in from ADT-1 with the registrar.	
8	Check whether the resolution related to the fixed remuneration of the Auditors is passed by the Board	
9	Check whether the Auditor to whom the company has appointed shall not be having the common partners.	
10	Whether the company has removed / proposed to be remove the auditor of the company.	
11	Whether the auditor has resigned from the office of the auditor.	
12	Whether the members of the company has provided by a resolution for rotation of the team of the auditor under section 139(3).	
13	Whether the auditor of the company provide other services if yes, Check whether same shall be approved by the audit committee/ Board of Directors of the company and does not include the services mentioned in the Section 144 of the Companies Act, 2013.	
14	Whether the Auditors comments, qualification. Observation included in the audit report has been read at the annual General meeting of the company.	
15	Whether the Auditor/ Authorized representative of auditor has attended the annual general meeting of the company.	
16	Whether any fraud has been reported by the auditor to the audit committee/ Board of the company.	
17	Check if the Company is required to appoint a Cost Auditor or not	
18	The Board shall appoint an individual, who is a Cost Accountant or a firm of cost accountants in practice,	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor.	
19	Check if the remuneration recommended by the Audit Committee shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders	

Checked by:

Reviewed by:

Date:

Date:

VII. APPOINTMENT AND QUALIFICATION OF DIRECTORS

Section 149 to Section 172 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

- Appointment of Directors
- Appointment of Additional Director, Alternate Director and nominee directors
- Vacation of office of Director
- Resignation of Director
- Removal of Directors
- Register of Directors

A. Checklist for Appointment and Qualification of Directors

S. No.	Particulars	Remarks
1	Check whether the Article of the company provides for the appointment of Director, Additional Director, Alternate Director, and Nominee Directors as may be applicable to the company or any specific resolution passed by the company in this regard.	
2	<p>Check whether during the audit period company has minimum number of directors as required under section 149 of the Act/ SEBI (LODR) Regulations w.r.t.</p> <ul style="list-style-type: none"> • Total Number of Director • Woman Director • Independent Director • Resident Director 	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
3	Check whether none of the directors is disqualified from being appointed as a director [Section 164 (1) & (2)].	
4	Whether any of the directors has vacated office of Director during the year (Section 167).	
5	Whether the consent in writing has been obtained from every director by the company in form DIR -2.	
6	The company has filed the details of appointment in for with the Registrar of Companies as an attachment of Form DIR-12 along with the DIR – 2 and Resolution as required.	
7	Whether the person proposed to be appointed is having valid DIN.	
8	Whether the particulars specified in DIN are correct and updated with the Registrar.	
9	Whether the Director of the company hold directorship within the limits prescribed under the Companies Act, 2013 and SEBI (LODR) Regulations, 2015. For reckoning the limit of the directorships of twenty companies, the directorship in dormant companies shall not be included	
10	Check whether company is having at least one director who stays in India for a total period of not less than one hundred and eighty two days during the financial year	
11	Whether the company has followed the provisions for determination of office of directors by retirement by rotation (Section 152).	
12	The company has received any intimation from a members proposing a person for office of a director, and notice in writing signifying the candidature as a director has been received by the company not less than 14 days before the meeting (Section 160). This is not applicable in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any	
13	The appointment of additional director, alternate and nominee director, filling up of casual vacancies has been done as provided	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	in section 161.	
14	Check whether the person appointed as alternate director to independent Director shall also satisfy the Criteria of Independence as provided in the Act.	
15	Check whether the term of office of the additional director shall hold office up to the date of the next Annual general meeting.	
16	Check whether in case of the casual vacancy, the director appointed shall hold the office up to the date on which the deceased director would have held the office of the Director.	
17	The company has ensured that the appointment of directors is voted individually (Section 162).	
18	The provisions of section 168 were complied with at the time of resignation of director.	
19	Whether the Boards report of the company contain the fact of Resignation of the Director.	
20	Whether the company has maintained a Register of directors and Key managerial personnel and their shareholding and is updated regularly.	
21	Whether any of the directors has been removed from the Board, if so, Check Whether provision of Section 169 is complied with.	
Independent Director		
22	Whether all the independent directors of the company have fulfilled the Criteria of Independence provided under section 149(6) of the Act and have submitted a declaration of independence to the company	
23	In case of Appointment of Independent Directors whether the explanatory statement under Section 102 has been annexed to the Notice of the meeting along with the opinion of the board.	
24	Whether the company has issued the appointment letter to the independent directors and the terms and conditions of the same has been placed on the website of the company.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
25	In case of re appointment of an Independent Director for the second term, check whether the Special Resolution has been passed by Members at general meeting.	
26	In case it is a listed company, whether it has any director elected by small shareholders and if so, whether such appointment is in compliance with rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014).	

Checked by:

Reviewed by:

Date:

Date:

Indicative list of documents to be checked

- Articles of Association
- Minutes papers of Board Meetings
- Notice and minutes of Annual General Meeting, Report of AGM
- Register of directors and KMP
- Board's Report
- DIR-2, DIR-6, DIR-8, DIR-9 (if any), DIR-10 (if any), DIR-11, DIR-12 MGT-14, MR-1 (Only for Managing Director, Whole Time Director or Manager)
- Declaration of independence given by Independent Directors
- Filings with Stock Exchanges
- Balance sheet and P&L account and Board's Report

B. Checklist for particulars of Appointment of Directors and Key Managerial Personnel (Section 170)

S. No.	Particulars	Remarks
1	The person to be appointed as director has given his consent to act as director to the company in Form No. DIR-2.	
2	The company has filed Form No. DIR-12 as per Companies (Appointment and Qualification of Directors) Rules, 2014 along with such consent in DIR- 2 with the Registrar within thirty days of such appointment.	
3	Check whether the date of obtaining DIN precedes the date of appointment as director.	
4	The company has received the notice of resignation from the director in writing.	

COMPLIANCES UNDER COMPANIES ACT, 2013

5	The company has filed Form No. DIR-12 as per Companies (Appointment and Qualification of Directors) Rules, 2014 along with notice of resignation within thirty days of such change.	
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VIII. MEETING OF THE BOARD AND ITS POWERS

Section 173 to Section 195 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter:

- Powers of the Board
- Loan to Directors
- Disclosure of Interest
- Loan and Investment by a Company
- Related party Transactions

A. Checklist for Meeting of the Board and Committees:

S. No.	Particulars	Remarks
1	Check whether the company has observed the Secretarial Standards on Board meeting (SS-1).	
2	Whether the Board meetings of the company was held as per the schedule of meeting provided in the Corporate governance report and Annual Return.	
3	Whether any board meeting was conducted through video conferencing and the compliances in respect thereof have been complied by the company.	
4	Whether the company has followed the proper board processes relating to preparation and sending of Notice & Agenda and in respect of Conduct of meeting and Recording of the minutes.	
5	Whether the Documents placed at the board meeting were initialed by Directors of the company.	
6	Whether the minutes of the meeting were recorded in a fair manner along with dissenting views of the members and were entered within the time prescribed and are signed appropriately.	
7	Check the constitution of the committee members in every meeting.	
8	Check if the notice and policy are uploaded on the website of the Company.	
	In respect of the Listed entities	
9	Whether the company has intimated about the Board meeting to the Stock Exchanges within the prescribed time limits.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
10	Whether the Notice of the board meeting has been published in the newspapers.	
11	Whether the outcome of the meeting was informed to the stock exchanges within the prescribed time limit from the conclusion of the meeting.	

Checked by:

Reviewed by:

Date:

Date:

B. Check list on Power of Board:

S. No.	Particulars	Remarks
1	Check whether the Article of the company has authorized the Board of the company to execute various powers on behalf of the company.	
2	Whether Board has exercises any powers provided under section 179(3) of the Act on behalf of the Company.	
3	Whether such power has been executed by means of resolutions passed at the meeting of the board.	
4	Whether board has delegated specific power as provided in Section 179. Check whether the Conditions of such delegation shall be fulfilled.	
5	Whether the resolution passed for exercising the power of Board has been filed with the Registrar in form MGT- 14.	
6	Whether the Company in general meeting has restricted on the exercise of any of the power of the Board as provided in Section 179.	
7	Whether the Board has exercised any power which is to be exercised by the company in General meeting If so, Whether the board has authorized by the company to exercise the same through a resolution.	

Checked by:

Reviewed by:

Date:

Date:

COMPLIANCES UNDER COMPANIES ACT, 2013

C. Checklist on Restrictions on power of Board, Disclosure of Interest, etc.

S. No.	Particulars	Remarks
1	Check whether the special resolution has been passed by the members for exercising powers under Section 180 of the Companies Act, 2013.	
2	In case the company has passed a resolution under section 180(1)(c), whether the resolution specify the total amount up to which money may be borrowed by the Board of Directors.	
3	Whether the company while passing resolution under section 180 (1)(a) stipulate any condition for use, disposal and investment of the proceeds.	
4	Whether the company has contributed in to any bonafide and Charitable funds. If yes, whether the contribution is with in the 5% of the average net profit of the company during three immediately preceding financial years. If the amount is more than the limit specified above, whether the permission of the company in general meeting has been obtained.	
5	Whether the company has made any political contribution during the financial year. If yes, Whether same has been disclosed in the Profit and loss account of the company.	
6	Whether the company has disclosed the contribution made by the company in to National Defense fund.(if any)	
7	Disclosure of Interest in other body corporate: Whether the Directors of the company has disclosed their interest in any other company/ companies , body corporates, firms or other association of Individuals including shareholding in form MBP-1.	
8	Disclosure of interest in Contract and arrangements: Whether the Directors of the company has disclosed their Concern/ interest, directly/ indirectly in any contract or arrangement entered and proposed to be entered by the companies as required under section 184.	

Checked by:

Reviewed by:

Date:

Date:

GUIDANCE NOTE ON SECRETARIAL AUDIT

D. Loan to Directors:

S. No.	Particulars	Remarks
1	Check whether any loans are appearing to have been given to directors	
2	Check whether the Company is falling under the exempted category or not.	
3	If the loan is granted check whether the company has sanctioned any specific schemes for the directors and employees of the company.	
4	If the loan is advanced to a Managing or Whole Time Director , check whether it is as a part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution.	
5	Whether the transaction relating to Loan, Guarantee, Advances, directly or indirectly has been entered by the company with “Any other person in whom the director is interested” covered under section 185 of the Companies Act, 2013. If yes, Whether the company has complied with Section 185 read with other applicable provisions of Companies Act, 2013.	

Checked by:

Reviewed by:

Date:

Date:

Documents to be verified:

- Financial Statement of company
- List of Holding, Subsidiary, Associate and joint venture companies.
- Disclosure of Interest (MBP- 1)
- Shareholding of Directors, KMP and relatives of Directors in other Companies

E. Loan and investment by Company:

S. No.	Particulars	Remarks
1	Check whether the Company has made investment through Investment companies.	
2	Check Whether the company has filed with the Registrar a return in Form CRL-1 disclosing number of layers of subsidiaries in excess of the layers.	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
3	Whether there is subsequent change in the layer of subsidiaries. If yes, Whether the same is in compliance with rule (2) of the Companies (Restriction on number of layers) Rules, 2017.	
4	Whether the company has extended any loan, Guarantee or has made investment in the securities of Other body corporates If yes, whether same is exceeding sixty per cent. of paid-up share capital, free reserves and securities premium account or one hundred per cent. of free reserves and securities premium account of the company. If yes, Whether same has been previously authorised by a special resolution passed in a general meeting.	
5	Whether the company has disclosed in the financial statement of the company, as well as in the Directors' report , the full particulars of the loans given, investment made or guarantee given or security provided along with the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security.	
6	Check Whether the loan is not provided on a interest rate lower than the prevailing yield of respective period of Loan.	
7	Whether the company is in default of the repayment of Deposit.	
8	Whether the company has maintained the register in form MBP - 2 containing particulars of the loan and investment made by the company.	
9	Whether the investments of the company are held in the name of the company. If NO, Whether the company has maintain the register in form MBP-3 chronologically and the particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name and the company shall also record the reasons for not holding the investments in its own name and the relationship or contract under which the investment is held in the name of any other person.	
10	Whether the entries in the register are authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.	

Checked by:

Reviewed by:

Date:

Date:

GUIDANCE NOTE ON SECRETARIAL AUDIT

F. Checklist for Register of loans guarantee, security and acquisition made by company

S. No.	Particulars	Remarks
1	The company from the date of its incorporation, has maintained a register in Form MBP -2 as per Companies (Meetings of Board and its Powers) Rules, 2014 and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions of securities.	
2	authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.	
3	The register is kept at the registered office of the company.	
4	The register has been preserved since incorporation and is kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.	

G. Checklist for Register of Investments not held in its own name (Section 187)

S. No.	Particulars	Remarks
1	A register of investments not held in the name of the company is maintained as per Form No. MBP 3, in accordance with Companies (Meetings of Board and its Powers) Rules, 2014.	
2	The entries in the register are made chronologically, the particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name are to be entered.	
3	The company has also recorded the reasons for not holding the investments in its own name and the relationship or contract under which the investment is held in the name of any other person.	
4	The company has also recorded when such investments are held in a third party's name for the time being or otherwise.	
5	The register is maintained at the registered office of the company and is preserved permanently.	
6	The custody of the register is with the company secretary of the company or if there is no company secretary, any director or any other officer authorised by the Board for the purpose.	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
7	The entries in the register are authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.	

H. Related Party Transactions:

In the following transactions the prior approval of the company is required through a resolution passes at a general meeting for entering in to a related party transaction with related party.

S No.	Nature of Transaction	Limit
1	sale, purchase or supply of any goods or materials	amounting to ten percent or more of the turnover of the company or rupees one hundred crore, whichever is lower,
2	selling or otherwise disposing of, or buying, property of any kind;	amounting to ten percent or more of net worth of the company or rupees one hundred crore, whichever is lower
3	leasing of property of any kind;	amounting to ten percent or more] of the net worth of company or 3[ten per cent or more of turnover] of the company or rupees one hundred crore, whichever is lower.
4	availing or rendering of any services;	mounting to ten percent or more] of the turnover of the company or rupees fifty crore, whichever is lower
5	appointment of any agent for purchase or sale of goods, materials, services or property;	amounting to ten percent or more] of the turnover of the company or rupees fifty crore, whichever is lower
6	such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and	at a monthly remuneration exceeding two and a half lakh rupees
7	underwriting the subscription of any securities or derivatives thereof, of the company	exceeding one percent. of the net worth

Checked by:

Reviewed by:

Date:

Date:

GUIDANCE NOTE ON SECRETARIAL AUDIT

I. Checklist for related Party Transactions

S. No.	Particulars	Remarks
1	<p>Check whether the company has prepared a list of related parties as per section 2(76) of the Act and there exists a system to check whether any contracts / arrangements are being entered into with any of those Parties.</p> <p>Also any suitable mechanism is derived to intimate the same to the secretarial department.</p>	
2	<p>Check whether the company has maintained the register of contract/ arrangement entered by the company along with the details of contract and arrangement in Form MBP-4.</p>	
3	<p>If the company is claiming exemption from the applicability of the section on the grounds that the transactions are in the ordinary course of business and are on arms length basis.</p> <p>Check whether the Board has taken an informed decision about the nature of transaction based on criteria given in Rule 15</p>	
4	<p>Check whether the company has entered into a contract/ arrangement with any related party through a board resolution at a meeting of the board.</p>	
5	<p>The company has obtained prior approval of the shareholders by a resolution in case of a company having paid up share capital of not less than such amount, or transactions not exceeding such sums as specified in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014.</p>	
6	<p>Check whether a member of the company, who is a related party and with whom the transaction is being entered into, has not voted on such resolution for approving the same.</p> <p>In case of companies in which 90 percent. or more members in number are relatives and related parties the above condition will not apply.</p>	
7	<p>The company has annexed explanatory statement to the notice of the board or general meeting as may be applicable disclosing the details required under rule 15.</p>	
8	<p>Check whether any director or related party is appointed as an office or place of profit in the company, its subsidiary or associate company and complied with applicable provisions of Section 188.</p>	
9	<p>Check whether omnibus approval for the related party transactions has been given by the Audit committee and is in accordance with Rule 6A of the Companies (Meeting of Board and its powers) Rules,</p>	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	2014	
10	Whether any contract has been entered by the company without the approval of the board/ approval of the company; If Yes, Whether such contract or Arrangement has been ratified by the board / Company as the case may be.	

Checked by:

Reviewed by:

Date:

Date:

J. Checklist for Register of contracts with related party and contracts and Bodies etc. in which directors are interested (Section 189)

S. No.	Particulars	Remarks
1	Check if the company has maintained one or more registers in Form MBP4 as prescribed under Companies (Meetings of Board and its Powers) Rules, 2014.	
2	The entries are made at once, in chronological order.	
3	The entries in the register(s) are authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.	
4	The register(s) is kept at the registered office of the company and is preserved permanently and is in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.	
5	The register(s) is placed before the next meeting of the Board and signed by all the directors present at the meeting.	

Checked by:

Reviewed by:

Date:

Date:

K. Checklist for Payment to director for loss of Office in connection with transfer of undertaking, property and shares:

S. No.	Particulars	Remarks
1	Check whether any payment has been made to the managing director or whole time director or manager of the company by way of compensation for the loss of office or as consideration for retirement from office;	
2	If yes, same has been provided as per the terms of Appointment. If No, Check whether no payment shall be made to the managing director or whole time director or manager of the company by way of	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	compensation for the loss of office, if <ol style="list-style-type: none"> a. the company is in default in repayment of public deposits or payment of interest thereon; b. the company is in default in redemption of debentures or payment of interest thereon; c. the company is in default in repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution; d. the company is in default in payment of any dues towards income tax, VAT, excise duty, service tax or any other tax or duty, by whatever name called, payable to the Central Government or any State Government, statutory authority or local authority (other than in cases where the company has disputed the liability to pay such dues); e. there are outstanding statutory dues to the employees or workmen of the company which have not been paid by the company (other than in cases where the company has disputed the liability to pay such dues); and f. (f) the company has not paid dividend on preference shares or not redeemed preference shares on due date. 	

Checked by:

Reviewed by:

Date:

Date:

IX. APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

Section 196 to Section 205 of the Companies Act, 2013 read with rules made thereunder and the following points are covered in this chapter

- Appointment and Remuneration of Managerial Personnel
- Managerial Remuneration

A. Checklist for Appointment and Remuneration of Managerial Personnel

S. No.	Particulars	Remarks
1	check whether the company has not appointed the Managing Director and a Manager at the same time	
2	Check whether the Managing Director/ Whole time director/ Manager shall not be appointed for a term exceeding 5 years at a time.	
3	In case of Reappointment, Check whether the re-appointment has	

COMPLIANCES UNDER COMPANIES ACT, 2013

	not been made earlier than 1 year before the expiry of term.	
4	Check whether the managing Director/ Whole time Director/ manager have satisfied the conditions provided under section 196(3).	
5	Incase the company is appointing. Re appointing any person who have attended the age of 70, Check whether the special resolution has been passed at the general meeting and the Explanatory statement in this regard has been attached with the notice of the meeting.	
6	Check whether the appointment of the MD or WTD has been made in accordance with section 197 and schedule V of the Companies Act, 2013	
7	Check whether the notice convening Board or General meeting considering such appointment shall include the terms and condition of appointment.	
8	Check whether the company has filed form MR-1 within 60 days of such appointment.	
	Check whether the copy of the Board resolution is filed to the Registrar within 30 days of passing of the Board resolution.	

Checked by:

Reviewed by:

Date:

Date:

B. Checklist for Managerial Remuneration:

S. No.	Particulars	Remarks
1	Whether the Articles of the company authorize to provide managerial remuneration	
2	Whether the company in general meeting has passed a resolution for authorizing the payment of remuneration exceeding 11% of the net profit of the company.	
3	Whether the net profit is calculated in the manner laid down in Section 198.	
4	Check whether the company has made default in payment of due to bank/ PF I /NCD. If yes, whether the company has obtained the prior approval of Bank / PFI /NCD / other security holder before obtaining approval in	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	general meeting.	
5	<p>Whether the special resolution has been passed for paying remuneration exceeding</p> <p>to one managing director; or whole time Director or</p> <ul style="list-style-type: none"> • 5% of the net profit of the company, • 10 % of the net profit of the company if there is more than one such directors remuneration. <p>to Director who are neither managing Director not whole time director.</p> <ul style="list-style-type: none"> • 1% of Net profit of the company if the company has MD,WTD or Manager • 3% of the net profit of the company. 	
6	<p>Whether the company has adequate profit during the year to pay remuneration to its Directors.</p> <p>If No, Whether the company has paid remuneration in accordance with the schedule v of the Act.</p>	
7	Whether the Directors of the company providing his services, which are of professional nature and possesses the requisite qualification for, practice of such profession.	
8	Whether the Directors are not receiving sitting fess more than the rupees one lakh per meeting.	
9	Check whether the siting fee payable to Independent Directors and Women Directors shall not be less than the sitting fee payable to other directors.	
10	Whether any director draws or receives, directly or indirectly, excess remuneration form the limit prescribed or without the approval as required under section 197.	
11	In case of listed company, whether the company in its board's report has disclosed the ratio of the remuneration of each director to the median employees remuneration.	
12	Whether the auditor of the company in his report under section 143, has given a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of	

COMPLIANCES UNDER COMPANIES ACT, 2013

S. No.	Particulars	Remarks
	Section 197 of the act.	
13	Whether the company has filed all necessary forms, ie. Form MGT 14 and form MR 2 within the specified time period with the ROC, for intimating the payment of remuneration to the managerial personnel	

Checked by:

Reviewed by:

Date:

Date:

C. Checklist on Key Managerial Personnel:

S. No.	Particulars	Remarks
1	Whether the company is required to appoint the Key Managerial personnel's including Company Secretary	
2	Check whether the company has appointed the following whole time key managerial personnel : <ul style="list-style-type: none"> • Managing Director/ Whole time Director / Chief Executive officer • Company Secretary • Chief financial officer 	
3	Appointment of key managerial personnel is made by a board resolution and the resolution containing the terms and conditions of the appointment.	
4	Whether the company has filed a return in form MR-1 (only for public company) within 60days of such appointment with the registrar.	
5	Whether an intimation has been filed in form DIR-12 to the Registrar within 30 days of Appointment.	
6	Whether the copy of the Board resolution is filed to the Registrar within 30 days of passing of the Board resolution..	
7	Whether any individual is holding the position of Chairperson and managing Director of the company. If yes, Check whether the article of the company provides for the same and/ or company carry the multiple businesses.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
8	Check whether the Key Managerial Personnel are not holding office of KMP in more than one company except in its one subsidiary company at the same time.	
9	Whether the any vacancies of the whole time KMP has been filled up by the Board with in a period of 6 Months or such lesser period as may be required under any other laws.	
10	Whether the KMP has provided the disclosure of his/ her interest to the company	
11	Whether the entries in the Register of Contracts for KMPs has been made.	

Checked by:

Reviewed by:

Date:

Date:

D. Checklist for Return of Appointment of Managerial Personnel (section 196)

S No.	Particular	Remarks
1	The Board has passed a resolution for the appointment of Managerial Personnel, viz. managing director, whole-time director or manager, subject to approval by members at the next general meeting.	
2	A copy of the Board resolution for appointment of the Managing director has been filed with MCA within 30 days of the appointment of the Managing Director.	
3	The notice convening the board/general meeting for considering the appointment includes the terms and conditions of such appointment and remuneration payable and other matters, including interest of director(s) in such appointments, if any.	
4	A return of appointment of a Managing Director, Whole Time Director or Manager, has been filed within sixty days of the appointment, with the Registrar in Form No. MR.1 and form DIR-12 as per Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 along with such fee as may be specified for this purpose.	
5	The provisions of Section 203 of the Act relating to the	

COMPLIANCES UNDER COMPANIES ACT, 2013

S No.	Particular	Remarks
	<p>appointment of Key Managerial Personnel and the Rules thereunder have been complied with i.e.</p> <p>a. Company was required to have whole time KMP and as such has appointed KMP.</p> <p>b. Chairperson of the company is not the Managing director or CEO of the company.</p> <p>c. Chairperson of the company is the Managing director or CEO of the company, but has been authorised by the articles.</p> <p>d. Chairperson of the company is the Managing director or CEO of the company, since company has multiple business.</p> <p>e. Board Resolution was passed for appointment of company containing terms and conditions of appointment and remuneration.</p> <p>f. None of the KMPs hold such office in more than one company.</p> <p>g. KMPs hold a similar position in another company, which is a subsidiary company.</p> <p>h. None of the KMPs is a director in any other company.</p> <p>i. KMPs are directors in other companies with the permission of the Board.</p> <p>j. KMPs holding such position as on 1st April 2014 in more than one company have chosen to be KMP of only one company within a period of six months.</p> <p>k. A person is appointed as managing director/ manager in two companies with the unanimous approval of the board for which specific notice was given.</p> <p>l. Vacancy created in the position of KMP was filled within six months</p>	

E. Checklist: Register of Directors and Key Managerial Personnel and their Shareholding [Section 170 read with Rule 17 of Companies (Appointment and Qualification of Directors) Rules, 2014

S. No.	Particulars	Remarks
1	The necessary particulars as prescribed in the rule 17 are incorporated in the register including details of securities held by	

GUIDANCE NOTE ON SECRETARIAL AUDIT

	each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.	
2	The register is maintained at the registered office of the company.	

Checklist Register of Directors' Attendance (Table F of Schedule I)

S. No.	Particulars	Remarks
1	The company has maintained a Register of Directors' Attendance of the board meeting and the committee meetings is kept for that purpose.	
2	Every director present at any meeting of the Board or of a Committee thereof has signed against his name.	
3	The requirements as specified in the Secretarial Standards have been complied with.	

Checklist of other important returns

S. No.	Particulars	Remarks
1	In case company makes any allotment of its securities, it has, within thirty days thereafter, filed with the Registrar a return of allotment in Form PAS-3 as per Companies (Prospectus and Allotment of Securities) Rules, 2014.	
2	A certified list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees was attached with PAS-3. Certification has been done by the signatory of the Form No. PAS-3.	

Checklist: other Registers

These registers are not statutory but statistical in nature and PCS is advised to comment about the maintenance of these registers though he need not qualify his report in case of non-compliance.

S. No.	Particulars	Remarks
Register of Shareholders' Attendance		
1	The company has maintained a register of shareholders' attendance at the general meetings or has kept the attendance slips collected from the members at the meeting.	

COMPLIANCES UNDER COMPANIES ACT, 2013

Register of Proxies		
2	The register of proxies containing details of proxies lodged in respect of every general meeting is maintained.	
Register of Documents Sealed		
3	The company has maintained a register of documents on which common seal is affixed.	
4	<p>The register contains the following:</p> <ul style="list-style-type: none"> • Number and date of the minutes authorising the use of the seal. • Date of sealing. • Persons in whose presence the seal was affixed. • Document sealed. • Location of document. 	

3

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

A. SECURITIES CONTRACTS (REGULATION) ACT, 1956 AND RULES MADE THEREUNDER

The Securities Contracts (Regulation) Act, 1956 (SCRA) defines various terms in relation to securities and provides the procedure for the stock exchanges to get recognition from Government/ SEBI, procedure for listing of securities of companies and operations of the brokers in relation to purchase and sale of securities on behalf of investors. The Central Government promulgated the Securities Contracts (Regulation) Rules, 1957 (SCRR) for carrying into effect the objects of the SCRA, 1956. A company listed on a stock exchange is required to comply with the provisions of SCRA and SCRR.

Check list for Compliances under Securities Contracts (Regulation) Act, 1956 and the Rules made there under:

S.No.	Particulars	Remarks
1.	Check whether the company has issued securities to the public.	
2.	Check whether the company has changed its capital structure during the period of Audit	
3.	Whether the conditions of listing agreement/SEBI (LODR) Regulations 2015 have been complied with, on receipt of approval for listing of securities? (Section 21)	
4.	Whether any application for listing of securities has been refused by the stock exchange. [Section 17A(3)]	
5.	If the permission is refused, whether the company has repaid all moneys, if any, received from applicants in pursuance of the offer document within a period of eight days? [Section 17A (3)]	
6.	In case the stock exchange refused to list the securities, whether the company has made an appeal to the Central Government or the Securities Appellate Tribunal, as the case may be, within the time limit as prescribed under the Act and Section 40 of the Companies Act, 2013 against such refusal. (Section 22 & 22A)	
7.	What was the outcome of the appeal?	
8.	If listed, whether the company has complied with Rule 19A of SCRR with respect to continuous listing requirement with the stock exchange. Note: To check this, PCS may check the annual report of the company and the shareholding pattern filed by the company with	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S.No.	Particulars	Remarks
	the stock exchange under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.	
9.	In case the company is aggrieved by the order of Securities Appellate Tribunal, whether the company has filed an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal. (Section 22F)	
10.	Check whether the company has contravened any provisions which may attract the penal provisions provided under Sections 23A to 23H	
11.	Whether the company has been granted immunity by Central Government. (Section 23 O)	
12.	If yes, whether it has been withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence. (Section 23 O)	
13.	Check whether the Company has been delisted by the Stock exchange?	

Checked by:

Reviewed by:

Date:

Date:

B. DEPOSITORIES ACT, 1996

According to section 2(e) of the Depositories Act, 1996, Depository means a company formed and registered under the Companies Act and which has been granted a certificate of registration under section 12(1A) of the Securities and Exchange Board of India Act, 1992.

The Depository holds electronic custody of securities and also arranges for transfer of ownership of securities on the settlement dates.

Chapter II of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 states that no issuer shall make a public issue or rights issue of specified securities unless it has entered into an agreement with a depository for dematerialization of specified securities already issued or proposed to be issued.

Section 29 of the Companies Act, 2013 also mandates that every company making public offer and such other class or classes of companies as may be prescribed, shall issue the securities only in dematerialized form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

However, unlisted company may convert its securities into dematerialized form or issue securities in physical or dematerialized form.

GUIDANCE NOTE ON SECRETARIAL AUDIT

Rule 9 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that the promoters of every company making a public offer of any convertible securities may hold such securities only in dematerialized form. Also the entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialized form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.

Checklist for compliances under Depositories Act, 1996

S. No.	Particulars	Remarks
1.	Check the Tripartite agreements entered into by the company with the RTA and depository for dematerialisation of securities. (NSDL/CDSL)	
2.	Check that the provisions of section 29 of the Companies Act, 2013 and the rules made thereunder have been complied with.	
3.	Check that the company has complied with clause 55A of SEBI (Depositories and Participants) Regulations, 1996 with respect to the reconciliation of share capital audit. The company shall file the Report within 30 days from the end of the quarter. i.e. April 30, July 30, October 30 and January 30 of every year. Check whether the Company or its RTA has ensured to establish continuous electronic means with the Depository, as required under regulation 56 of SEBI (Depositories and Participants) Regulations, 1996	
4.	Check whether there is any contravention which may attract the penal provisions provided under Sections 19A to 19G.	
5.	Whether the company has been granted immunity by Central Government. (Section 22B)	
6.	If yes, whether it has been withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence. (Section 22B)	
7.	In case the company is aggrieved by the order of Board, may prefer an appeal to the Central Government or the securities appellate tribunal, as the case may be within a stipulated time as may be prescribed. (Section 23)	

Note: PCS may check the certified copy of quarterly audit report submitted to the stock exchange by the company with respect to reconciliation.

Checked by:

Reviewed by:

Date:

Date:

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

C. REGULATIONS AND GUIDELINES PRESCRIBED UNDER SEBI ACT, 1992

i. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Takeover of companies whose securities are listed on one or more recognized stock exchanges in India is regulated by the provisions of SEBI (Listing obligations and Disclosure Requirements) Regulations, 2015 and the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The compliances under the regulations include event based/continual disclosures, open offer requirements including public announcement, escrow account, obligations of acquirer/target company/merchant banker, undertaking/authorization, offer price etc.

a. Checklist for Compliances under SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011- For Acquirer Company:

S. No.	Particulars	Remarks
1.	The Company has appointed merchant banker registered with SEBI.	
2.	The acquirer has made a public announcement through a merchant banker with respect to substantial acquisition of shares or voting rights and acquisition of control in the target company within the timelines prescribed under regulation 13 for different types of acquisitions such as market purchase/conversions etc. (Note: The PCS may check from the documents of the target company for ensuring compliance with the same)	
3.	To check in the event, the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, whether he has delisted the company in accordance with the provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009. (Regulation 5A)	
4.	Where an offer made for delisting is not successful, whether announcement within two working days in respect of such failure in all the newspapers in which the detailed public statement was made. (Regulation 5A)	
5.	Where delisting offer made, whether through the manager to the open offer, within five working days from the date of the announcement of failure of delisting offer, a draft of the letter of offer if filled with SEBI. (Regulation 5A)	
6.	The requirement specified under regulation 5A, with respect to announcements and the timelines have been followed, in case of failure of delisting offer	
7.	The acquirer through its manager to the open offer has sent the public announcement to all the stock exchanges where the shares of	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	the target company are listed within the specified time limit.	
8.	<p>The copy of the public announcement has also been sent to SEBI and the target company at its registered office within one working day of date of the public announcement.</p> <p>(Note: The PCS may check the copy of the documents mentioned in point 7 and 8 available by the merchant banker for verifying the same)</p>	
9.	To check no voluntary offer is made by the acquirer or any person acting in concert with him who has acquired shares of the target company in the preceding fifty-two weeks without attracting the obligation to make a public announcement of an open offer. (Regulation 6)	
10.	Whether the acquirer and persons acting in concert with him, who have made a public announcement of voluntary offer to acquire shares of a target company has not acquired any shares of the target company for a period of six months after completion of the open offer except pursuant to another voluntary open offer or competing offer. (Regulation 6)	
11.	To check that if a person is a wilful defaulter, he/ she shall not make a public announcement of an open offer for acquiring shares or enter into any transaction that would attract the obligation to make a public announcement of an open offer. (Regulation 6A)	
12.	Whether open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 made for at least twenty-six per cent of total shares of the target company, as of tenth working day from the closure of the tendering period. (Regulation 7)	
13.	Whether voluntary offer is made for at least such number of shares as would entitle the holder thereof to exercise an additional ten per cent of the total shares of the target company, and shall not exceed such number of shares as would result in the post-acquisition holding of the acquirer and persons acting in concert with him exceeding the maximum permissible non-public shareholding applicable to such target company. (Regulation 7)	
14.	Where different payment modes are given whether detailed public statement and the letter of offer shall contain justification for such differential pricing. (Regulation 9)	
15.	The acquirer has published detailed public statement not later than five workings days of the public announcement. (Note: The PCS may check the copies of newspaper clipping for ensuring the compliance	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	of the same)	
16.	The acquirer has after publication of detailed public statement in the newspaper, sent a copy of the same to – (i) The SEBI; (ii) All the stock exchanges where the shares of the target company are listed; (iii) The target company at its registered office. (Note : The PCS may check the document provided by merchant banker for verifying the same)	
17.	Whether the contents of public announcement is as per Regulation 15.	
18.	Where escrow account is in the form of a bank guarantee, whether such bank guarantee was in favour of the manager to the open offer and was be kept valid throughout the offer period and for an additional period of thirty days after completion of payment of consideration to shareholders. (Regulation 17)	
19.	Escrow account is created not later than two days prior to the date of detailed public statement, as required under regulation 17.	
20.	Within five working days of the detailed public statement the draft letter of offer is to be filed with SEBI. Simultaneously a copy of the same has been sent to the target company.	
21.	The letter of offer shall be dispatched to the shareholders whose names appear in the Register of Members of the Target Co. as on the identified date, not later than seven working days from the receipt of comments from SEBI.	
22.	If no comments received from SEBI then within seven working days from the expiry of the period stipulated in sub-regulation (4) of regulation 16. (Regulation 18)	
23.	Where any revision of the open offer, whether by way of an upward revision in offer price, or of the offer size, the acquirer made corresponding increases to the amount kept in escrow account under regulation 17 prior to such revision. (Regulation 18)	
24.	Whether acquirer and persons acting in concert with him acquired or sell any shares of the target company during the period between three working days prior to the commencement of the tendering period and until the expiry of the tendering period. (Regulation 18)	
25.	Whether tendering period remained open for ten working days.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	(Regulation 18)	
26.	The letter of offer has been sent to the custodian of shares underlying depository receipts (in case the company has issued GDRs or ADRs) of the company.	
27.	The offer price and offer size requirements are complied with as per Regulation 7 and 8.	
28.	In case of upward revision in offer price, or of the offer size, the acquirer has made announcement about the same in all the newspaper as prescribed under these regulations. (Note : The PCS may check the copy of newspaper clipping for verifying the same)	
29.	The acquirer has informed about such upward revision to SEBI, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.	
30.	The acquirer has disclosed during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company to each of the stock exchange on which the shares of the target company are listed and to the target company at its registered office within twenty- four hours of such acquisition.	
31.	The acquirer shall issue an advertisement one working day before the commencement of the tendering period, announcing the schedule of activities for the open offer, the status of statutory and other approvals, unfulfilled conditions, if any, and their status, the procedure for tendering acceptances and such other material detail as may be specified in all the newspapers in which the detailed public statement pursuant to the public announcement was made. (Regulation 18)	
32.	The acquirer has sent such post offer advertisement to- (i) all the newspaper in which the detailed public statement pursuant to the public announcement was made (ii) SEBI; (iii) all the stock exchanges on which the shares of the target company are listed; and (iv) The target company at its registered office.	
33.	Has the acquirer acquired or sold any share of the target company during the period between three working days prior to the commencement of the tendering period and until the expiry of the tendering period. (Regulation 18)	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
34.	The acquirer has issued a post offer advertisement within five working days after the offer period giving details including aggregate number of shares tendered, accepted, date of payment of consideration.	
35.	The acquirer has sent such post offer advertisement to- i. All the newspapers in which the detailed public statement pursuant to the public announcement was made; ii. SEBI; iii. all the stock exchanges on which the shares of the target company are listed; and iv. The target company at its registered office.	
36.	Where conditional offer is made the acquirer and persons acting in concert with him not acquired, during the offer period, any shares in the target company except under the open offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made. (Regulation 19)	
37.	After payment of consideration to the shareholders, the acquirer has transferred the unclaimed balances, if any, lying at the credit of the special escrow account, to the Investor Protection and Education Fund established under the SEBI (Investor Protection and Education Fund) Regulations, 2009, at the end of seven years from the date of deposit thereof.	
38.	In case of withdrawal of open offer, the acquirer shall through the manager to open offer has made an announcement within two working days in the same newspaper in which public announcement to the open offer was published providing the grounds and reasons for withdrawal of open offer.	
39.	The acquirer has informed in writing with such announcement to - (i) SEBI;(ii) all the stock exchanges on which the shares of the target company are listed; and (iii) The target company at its registered office.	
40.	Where any competing offer is made, whether such offer is made within fifteen working days of the date of the detailed public statement made by the acquirer. (Regulation 20)	
41.	The open offer for acquiring shares once made shall not be withdrawn except as per the provisions of Regulation 23	
42.	Where acquirer or any person acting in concert is already represented by a director on the board of the target company, such	

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S. No.	Particulars	Remarks
	director has not participated in any deliberations of the board of directors of the target company or voted on any matter in relation to the open offer. (Regulation 24)	
43.	In the event it was required to alienate any material assets of the target company or any of its subsidiaries, where the acquirer has not expressed its intention to alienate in the detailed public statement and the letter of offer, it has been debarred from causing such alienation within the period of two years. In case the alienation was made within 2 years, such alienation has been approved by the shareholders by special resolution by way of postal ballot by the shareholders of the target company. (Note: The PCS may check Form No. MGT-14 for verifying the special resolution passed for such alienation)	
44.	Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations and such committee shall be entitled to seek external professional advice at the expense of the target company. (Regulation 26)	
45.	Whether during the offer period, unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries has not done any of the activity specified in Regulation 26(2)	
46.	The recommendation on open offer made by the committee of independent directors of the target company, has been published in the same newspaper where the public announcement of the open offer was published at least two working days before the commencement of the tendering period.	
47.	The copy of such recommendations published, has been sent to :- (i) SEBI; (ii) all the stock exchanges on which the shares of the target company are listed; and (iii) the manger to the open offer	
48.	The manager to open offer has submitted the due diligence certificate along with the draft letter of offer filed under regulation 16 to SEBI. (Note: PCS may check the copy of the due diligence certificate)	
49.	The manager to open offer shall file a report with the Board within fifteen working days from the expiry of the tendering period	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	confirming status of completion of various open offer requirement. (Note : PCS may check the copy of the report submitted to SEBI)	
50.	In case of event based disclosures as prescribed under regulation 29(1) and (2), such disclosures have been made to the target company at its registered office and to all the stock exchanges where the shares of the target company are listed within the two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company	
51.	The continual disclosures as specified in regulation 30(1) and (2), have been made within seven working days from the end of each financial year to every stock exchanges where the shares of the target company are listed and to the target company at its registered office by the promoters.	
52.	The disclosure regarding shares encumbered by promoter or by persons acting in concert with him and also any invocation of such encumbrance or release of such encumbrance shares, have been made to all the stock exchanges where the shares of the target company are listed and to the target company at its registered office within seven working days from the creation or invocation or release of encumbrance, as the case may be. (Note: The PCS may check the copy of the formats submitted to stock exchange and target company)	
53.	The PCS may check the copy of the formats prescribed for various disclosures/Reports for ensuring compliance of SEBI (SAST) Regulations 2011.	

b. Obligations of Target Company in case of an open offer

S. No.	Particulars	Remarks
1.	During the offer period, no person representing the acquirer or any person acting in concert with him is to be appointed as director on the board of directors of the target company, whether as an additional director or in a casual vacancy.	
2.	In the event the acquirer or any person acting in concert is already represented by a director on the board of the target company, such director has not participated in any deliberations of the board of directors of the target company or vote on any matter in relation to the open offer.	
3.	Once a Public Announcement is made, the board of directors of the Target Company has ensured that the business of the target	

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	company is conducted in the ordinary course. Alienation of material assets, material borrowings, issue of any authorized securities, announcement of a buyback offer etc. is not permitted, unless authorized by shareholders by way of a special resolution by postal ballot.	
4.	The target company has furnished to the acquirer within two working days from the identified date, a list of shareholders and a list of persons whose applications, if any, for registration of transfer of shares, in case of physical shares, are pending with the target company.	
5.	After closure of the open offer, the target company has provided assistance to the acquirer in verification of the shares tendered for acceptance under the open offer, in case of physical shares.	
6,	Upon receipt of the detailed public statement, the board of directors of the target company has constituted a committee of independent directors to provide reasoned recommendations on such open offer, and the target company has published such recommendations and such committee shall be entitled to seek external professional advice at the expense of the target company. The recommendations of the Independent Directors are published in the same newspaper where the Detailed Public Statement is published by the acquirer and are published at least 2 working days before opening of the offer. The recommendation will also be sent to SEBI, Stock Exchanges and the Manager to the offer.	

c. Event Base Checklist for SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

S. No.	Particulars	Remarks
1.	Whether acquisition is 25% or more	
2.	if yes, whether company has made public announcement	
3.	is the offer size as per the regulation	
4.	Whether the mode of payment is as per requirement	
5.	Whether the consideration for listed securities is as per the regulation	
6.	Whether any acquisition is under exempt category	
7.	if yes, are the conditions for exemption are followed	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
8.	Whether merchant banker is appointed	
9.	Whether the public announcement is made	
10.	Whether the copy of public announcement is sent to SEBI and target company at its registered office	
11.	Whether the public announcement contents all the information as required under regulation	
12.	Whether draft offer letter is filed with Board	
13.	Whether escrow account is opened	
14.	Whether the draft letter of offer is given to target company and custodian	
15.	Whether the letter of offer dispatched to shareholders	
16.	Whether post issue advertisement is given	
17.	Whether any offer is withdrawn	
18.	Whether offer is opened within time frame after withdrawal	
19.	Whether any person from the acquirer appointed as director of target company	
20.	Whether the acquirer has made disclosure (5% and more) to SEBI and target company	
21.	Whether acquirer has made continual disclosure (25% or more) to SEBI and target company	
22.	Whether disclosure of encumbered shares made	

ii. SEBI (Prohibition of Insider Trading) Regulations, 2015

The Securities and Exchange Board of India (SEBI) formulated the SEBI (Insider Trading) Regulations, 1992 under the powers conferred on it under the SEBI Act, 1992. Besides, SEBI felt the need. To ensure a clear regulatory policy that is not only easily comprehensible but is also comprehensive led to this Committee being set up under the chairmanship of Justice N. K. Sodhi, Former Chief Justice of the High Courts of Kerala and Karnataka and the Former Presiding Officer of the Securities Appellate Tribunal.

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SEBI has issued and notified the SEBI (Prohibition of Insider Trading) Regulations, 2015 (Regulations) on 15th January, 2015 based on recommendations of the Justice Sodhi Committee. These Regulations are effective from 15th May, 2015.

The revised disclosure formats, i.e. Form A to Form D were effective from 16.09.2015. Every listed company has to comply with the provisions of SEBI (Prohibition of Insider Trading) 2015.

Checklist for Compliances under SEBI (Prohibition of Insider Trading) Regulations, 2015

S. No.	Particulars	Remarks
1.	Any action has been initiated by SEBI against the company or any of its promoter, director, Key Managerial Personnel, officer or employee under the PIT regulations in the past or present.	
2.	The company or any of its promoters, director, Key Managerial Personnel, officer or employee has been convicted by SEBI with respect to Insider Trading in the past or present. (Note: Please mention the action taken by SEBI in the audit report as qualification)	
3.	The company has appointed a compliance officer. Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations. (Regulation 9)	
4.	Whether the Board of Directors of every listed company has formulated a code of practices and procedures for fair disclosure of unpublished price sensitive information as per Schedule A to these regulations.	
5.	The Code must be hosted on the website of the company and a copy of the same must be sent to the stock exchange.	
6.	The Company has appointed a Chief Investor Relation Officer, who is also a senior officer of the company to deal with dissemination of information and disclosure of unpublished price sensitive information, as per the principles set out in Schedule A of these regulations.	
7.	The Company has formulated code of conduct to regulate, monitor and report trading by insiders as per Schedule B of these regulations.	
8.	The Company has formulated an internal code of conduct for governing dealing in securities as per the minimum standards set out in Schedule B.	
9.	Every such code of practices and procedure relating to unpublished price sensitive information and every document	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	thereto has been promptly intimated to the stock exchange where the securities are listed.	
10.	Whether the trading plan has been formulated in compliance with Regulation 5? If yes, whether necessary compliances have been made.	
11.	Whether the disclosures were taken from the KMPs of the Company and from those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions. (Regulation 6)	
12.	To check whether the connected person or class of connected persons have made disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations. (Regulation 7)	
13.	Whether every code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto has been promptly intimated to the stock exchanges where the securities are listed. (Regulation 8)	
14.	Whether any action has been sanctioned by the Board for the violation/ contravention of the provisions these regulations. (Regulation 10)	
15.	The Compliance officer has reviewed and monitored the trading plans if any, submitted by any insider and approved the trading plan that it has not violated these regulations.	
16.	Whether The Compliance officer has received undertaking or declaration from insider with respect to the trading plan, as the case may be.	
17.	The Compliance officer has notified the trading plan to the stock exchange(s), If any.	
18.	The Company maintains the record of the said disclosures as required for a minimum period of five years.	
19.	The Company has received the initial disclosure from every promoter, Key Managerial Personnel (KMP) and Directors with respect to the securities held by them in Company.	
20.	The Company receives disclosure by every person on appointment as KMP or Director or upon becoming a promoter within seven working days of such appointment or becoming promoter.	
21.	The Company is regular in receiving continual disclosure from the	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	promoter(s), employees and directors with respect to the number of securities acquired or disposed of within two trading days of such transaction, if such transactions exceed Rs.10,00,000 or such other value as may be specified in a calendar quarter.	
22.	The Company has notified the particulars of such trading to the stock exchange(s) within two trading days of receipt of the disclosure or from becoming aware of such information.	
23.	The Company is regular in receiving disclosures of holding & trading of securities of the company by any other connected person or class of connected persons, held or traded by them. The Company has in its discretion require this information & set out the frequency for seeking such information.	
24.	The Compliance officer has provided reports of trading to the Chairman of Audit Committee, if any or to the Chairman of the Board of Directors as per the frequency stipulated by the Board of Directors.	
25.	The Company follows Chinese wall procedures & processes as per the norms contained in the code of conduct, wherever applicable.	
26.	The Compliance officer determines the timing of closure of the trading window and re-opening of the trading window.	
27.	The Compliance officer has put in place appropriate procedure for pre-clearance of trades for its employees.	
28.	The Designated Person have not entered into any contra trade as per the specified period as mentioned in the code of conduct which shall be not less than six months from the date of trade in securities of the Company.	
29.	The profit arises from the Contra trade, if executed inadvertently or otherwise, has been liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by the SEBI under the Act.	
30.	Any action taken against persons responsible for non- adherence with respect to formulation of code of conduct.	
31.	Any other prevention mode with respect to insider trading as adopted by the Company.	

Checked by:

Reviewed by:

Date:

Date:

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

Event based checklist of SEBI (Prohibition of Insider Trading) Regulations 2015

S. No.	Particulars	Remarks
1.	Check whether the Code of conduct adopted by the company.	
2.	Check the Compliances with the requirement of closure of trading window.	
3.	Whether the Compliance with applicable disclosures to the stock exchange for change in promoter holding has been made.	
4.	Check whether the trading plan has been obtained and compliance with respect to that is observed.	
5.	Check the Grey list for securities.	

Checked by:

Reviewed by:

Date:

Date:

Periodic Compliances checklist of SEBI (Prohibition of Insider Trading) Regulations 2015:

S. No.	Compliance	Remarks
1.	Quarterly disclosure of statement of transaction	
2.	Quarterly disclosure of statement of holding of securities	
3.	Annual disclosure of holding of statement of holding of securities	

Checked by:

Reviewed by:

Date:

Date:

iii. SEBI (ICDR) Regulations, 2009

S. No.	Particulars	Remarks
General Compliances:		
1.	The compliances relating to filing of offer documents, appointment of merchant bankers and intermediaries have been complied with. (The draft offer document has to be filed with SEBI at least thirty days prior to registering a prospectus, red herring prospectus or shelf prospectus with	

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S. No.	Particulars	Remarks
	<p>ROC or filing the letter offer with the designated Stock Exchange (Regulation 6).</p> <p>(Note: The draft offer document has to be made available to the public for at least 21 days from the date of such filing with SEBI. A statement on the comments received from public on draft offer document has to be filed with SEBI. The observations/suggestions of SEBI on draft offer documents have to be carried out while registering of prospectus with ROC. A copy of letter of offer is to be filed with SEBI and with stock exchanges where the securities are proposed to be listed, simultaneously while registering the prospectus with ROC)</p>	
2.	The issuer has deposited, before opening of subscription, an amount calculate at the rate of one percent of the amount of securities offered for subscription to the public.	
3.	<p>The company has submitted the necessary documents as required under Regulation 8 before the opening of the issue, during the issue and after the issue?</p> <p>Whether the Company has submitted at the time of filing draft offer document with the recognised stock exchange where the specified securities are proposed to be listed, submit the Permanent Account Number, bank account number and passport number of its promoters to such stock exchange. (Regulation 8)</p>	
4.	The due diligence reports have been filed with SEBI (pre issue diligence reports/post issue diligence reports)	
5.	The company has complied with the requirements relating to lock in period.	
6.	Where warrants have been issued along with public issue or rights issue, the tenure of such warrants has not exceeded a period of eighteen months from the date of allotment in public/ rights issue.	
7.	The utilization of proceeds for General Corporate Purposes have not exceeded twenty five per cent of the amounts generated by the issuer.	
8.	<p>The issuer company has not made:</p> <p>(a) a public issue of equity securities, if the issuer or any of its promoters or directors is a wilful defaulter; or</p>	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	<p>(b) a public issue of convertible debt instruments if,</p> <p>(i) the issuer or any of its promoters or directors is a wilful defaulter, or</p> <p>(ii) (ii) it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months.</p>	
9.	<p>All application moneys received has been refunded to the applicants in case of non-receipt of minimum subscription</p> <p>(i) ninety per cent of the offer within:</p> <p>(ii) fifteen days of the closure of the issue, in case of a non-underwritten issue; and</p> <p>(iii) seventy days of the closure of the issue, in the case of an underwritten issue where minimum subscription including devolvement obligations paid by the underwriters is not received within sixty days of the closure of the issue.</p> <p>(Note: The PCS may check the refund orders/ certificate of posting for the compliance of the provision)</p>	
10.	<p>When the issue size exceeds five hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer (Regulation 16)</p> <p>(Note: The PCS may check the copy of report of the monitoring agency in schedule IX, which has to be filed on a quarterly basis, till at least ninety five percent of the proceeds of the issue, excluding the proceeds under offer for sale and amount raised for general corporate purpose have been utilized.</p> <p>(Note: the PCS may check the documents from the merchant banker w.r.t. its compliance)</p>	
11.	<p>The issuer has within forty five days from the end of each quarter, publically disseminated the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed.</p>	
12.	<p>The specified securities are to be allotted and/or application moneys to be refunded within fifteen days from the date of</p>	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	<p>closure of the issue and where securities are not allotted/ application moneys refunded interest undertaken in the offer document has to be paid, in case of delayed payments and the payment has to be done by NEFT / RTGS. (Note: The PCS may check the refund orders /Certificate of posting to ensure compliance of the same.)</p> <p>The pre-issue advertisement is required to be made after registering the red herring prospectus (in case of book built issue) or prospectus (in case of fixed price issue) with Registrar of companies in one English national daily newspaper with wide circulation, Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated in format specified in Part A of schedule XIII.</p> <p>(Note: The PCS may check the copies of the newspaper clippings for compliance of the same.)</p>	
13.	<p>The issuer is required to make an announcement of the floor price or price band along with financial ratios computed for both the upper and lower end of the price band at least 5 working days before the opening bid (in case of IPO) and at least one working day before the opening of the bid (in case of FPO) in all newspapers in which pre-issue advertisement was made. The announcement shall also be sent to the stock exchanges where the securities are proposed to be listed for disclosure on their website.</p> <p>(Note: The PCS may check the copies of the newspaper clippings for compliance of the same.)</p> <p>The issuer must take care that the cap on the price band shall be less than or equal to one hundred and twenty per cent of the floor price and the floor price or the final price shall not be less than the face value of the specified securities. (Regulation 30)</p>	
14.	<p>Receipt of minimum promoters' contribution and allotment of their securities are in accordance with the requirements of Regulation 32. (Note: the PCS may verify from the copy of the resolution passed by the board of directors of the issuer for allotting specified securities to promoters towards amount received against promoters' contribution, before opening of the issue; and a certificate from a Chartered Accountant, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, which shall also contain the names and addresses of the promoters</p>	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	who have contributed to the promoters' contribution and the amount paid by each of them towards such contribution)	
15.	An issuer making a public issue of specified securities providing for green shoe option for stabilising the post listing price of its specified securities, may do so only after shareholder approval in the General Meeting and satisfying other relevant conditions as specified under Section 45. (Note: The PCS may check copy of resolution passed in the general meeting of shareholders and the agreement in between the issuer and the stabilizing agent.)	
16,	A report on activities under green shoe option stabilizing agent are required to be reported to SEBI on daily basis and during the stabilisation period and a final report to the SEBI in the format specified in Schedule XII. (Note: the PCS may verify the copies of such report for compliance.)	
17.	Whether the application money received has been utilized in accordance with the section 40 of Companies Act, 2013.	
18.	Whether the disclosures made in the red herring prospectus while making an initial public offer are updated on an annual basis by the issuer and shall be made publicly accessible.	
19.	Check whether the outstanding subscription money is called within twelve months from the date of allotment in the issue and where the applicant has failed to pay the call money within the twelve months, such shares has been forfeited.	
20.	Whether the issuer has altered the terms (including the terms of issue) of specified securities which and the same may adversely affect the interests of the holders of that specified securities, if so, the consent in writing of the holders of not less than three-fourths of the specified securities of that class or with the sanction of a special resolution passed at a meeting of the holders of the specified securities of that class has been obtained. This is only for holders of Convertible portion of the PCDs. Hence applicable only if an issue of such an instrument has been made. (Note: The true copy of the resolution may be checked for	

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S. No.	Particulars	Remarks
	compliance of the same.)	
21.	The issuer is required to appoint a compliance officer for monitoring the compliance of securities laws and for redressal of investor grievances.	
22.	The lead merchant banker is required to submit post issue reports to SEBI. (Initial report within 3 days from the closure of the issue and final report within 15 days of date of finalisation of basis of allotment.)	
23.	The lead merchant banker is required to submit post issue reports to SEBI. Initial report within 3 days from the closure of the issue as specified in Part B of Schedule XVI and Final report within 15 days of date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue as specified in Part D of Schedule XVI.	
24.	The post issue advertisement is issued within ten days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated containing all the details as specified.) (Note: The PCS may check the copies of newspaper clippings for compliance of the same.)	
25.	The issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting. (Note: The PCS may check the e-form MGT. 14 filed with ROC for the details of the issue)	
26.	The issuer has created Debenture Redemption Reserve in accordance with section 71 of Companies Act, 2013	
27.	In case of secured debentures, the issuer has created charge on the security. (Note: The PCS may check the e-form CHG.9 for verifying the same.)	
28.	Where the value of non-convertible portion of partly convertible debt instruments exceeds fifty lakhs the same may be rolled	

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S. No.	Particulars	Remarks
	<p>over without change in interest rate only when 75% of holders of convertible debentures have approved the rollover through a resolution by postal ballot</p> <p>(Note: The PCS may check MGT. 14 for the compliance of the same.)</p>	
RIGHTS ISSUE		
29.	<p>Certified true copy of the resolution passed by the Board of Directors for issue of securities under proposed rights issue/ approving the proposed rights issue.</p>	
30.	<p>The stock exchange has been informed 2 working days prior to the Board Meeting which proposes to consider a rights issue.</p>	
31.	<p>Certified true copy of the resolution passed by the Shareholders, if any;</p> <ul style="list-style-type: none"> • increase in the authorised share capital required) (special resolution). • for issue of securities under proposed rights issue <p>(Note: The PCS may check the copy of Form No. SH 7, MGT14 filed with ROC</p>	
32.	<p>A pre-issue advertisement for the rights issue has to be made in accordance with the details specified in the regulation, at least three days before the opening of the issue in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated</p> <p>(Note: The PCS may check the copies of the newspaper clippings for the compliance of the same.)</p> <p>(Note: The PCS may check the E-form MGT.14 filed with ROC for verification.)</p>	
33.	<p>In case the company has issued convertible debt instruments, it is to be ensured whether the issuer company has made reservation of equity shares of the same class in favour of the holders of such instruments proportion to the convertible part thereof, before opening a rights issue of equity shares. Check whether the equity shares so reserved were issued at the time</p>	

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S. No.	Particulars	Remarks
	<p>of conversion of convertible debt instruments on the same terms at which equity shares offered in rights issues were offered.</p> <p>(Note: The true copy of the resolution may be checked for compliance of the same and also the returns filed on allotment of the same to the debenture holders.)</p>	
34.	To check if 7 working days' notice was given for Record Date. To also check if all the directors at a duly convened meeting had approved the Letter of Offer.	
35.	The issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed.	
36.	The promoters have complied with the SEBI (SAST) Regulations, in case of taking in additional shares.	
37.	Necessary disclosures have been made by the promoters under the SEBI (SAST) and SEBI (PIT) Regulations, with Stock Exchanges where the shares are listed/SEBI post the rights issue.	
38.	The company has complied with the provisions of Companies Act 2013 (covered elsewhere in the guidance note).	
Bonus Issue:		
39	<p>For the issue of bonus shares following points must be taken into consideration as per section 63 of Companies Act, 2013</p> <ol style="list-style-type: none"> a. Whether the issuer company is authorised by its articles; b. The company has on recommendation of the Board, been authorised in the general meeting of the company; c. it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; d. it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to Provident Fund, gratuity and bonus; e. the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up; f. The company which has once announced the decision of its Board recommending a bonus issue, shall not 	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	subsequently withdraw the same. The bonus shares shall not be issued in lieu of dividend.	
40.	A certificate from the Managing director/ Company Secretary that the proposed bonus shares would be ranking pari-passu in all respects including dividend with the existing equity shares of the company should be checked. (Note: This certificate is required as per the stock exchange norms. The certificate requirement is not prescribed under SEBI (ICDR) Regulations, 2009 but there is a clause that the The shares issued in the issue shall be pari-passu with the existing shares in all respects including dividends.)	
41.	SEBI (ICDR) Regulations, 2009 but there is a clause that the The shares issued in the issue shall be pari-passu with the existing shares in all respects including dividends.)	
42.	To confirm that all the existing securities of the company were fully paid-up and listed on the Exchange at the time of the bonus issue.	
43.	To check if the Bonus has been issued only out of free reserves To check if the bonus is issued out of reserves built out of the genuine profits or securities premium collected in cash only and reserves created by revaluation of fixed assets shall not be capitalised for the purpose of issuing bonus shares.	
44.	In case the company has issued convertible instruments, to check if the company has made reservation of equity shares of the same class in favour of the holders of outstanding compulsorily convertible debt instruments if any, in proportion to the convertible part thereof.	
45.	A certified true copy of the acknowledgement of FCGPR form has been submitted by the company to Reserve Bank of India in respect of allotment of bonus shares to foreign entities/shareholders within 30 days of issue of shares.	
46.	Check whether the bonus issue was implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.	

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S. No.	Particulars	Remarks
47.	In case of unlisted company the issuer company shall comply with section 63 of the Companies Act, 2013 which has been discussed earlier.	

PREFERENTIAL ISSUE:

It may be noted that the provisions of this Part shall not apply where the preferential issue of specified securities is made to the lenders pursuant to conversion of their debt, as part of a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:

- (a) the guidelines for determining the conversion price have been specified by the Reserve Bank of India in accordance with which the conversion price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;
- (b) the conversion price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder:

Provided that till such date on which section 247 of the Companies Act, 2013 and the relevant Rules come into force, valuer shall mean an independent merchant banker registered with the Board or an independent chartered accountant in practice having a minimum experience of ten years;

- (c) specified securities so allotted shall be locked-in for a period of one year from the date of their allotment:

Provided that for the purpose of transferring the control, the lenders may transfer the specified securities allotted to them before completion of the lock-in period subject to continuation of the lock-in on such securities for the remaining period, with the transferee;
- (d) the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;
- (e) the applicable provisions of the Companies Act, 2013 are complied with, including the requirement of special resolution.
- (f) The provisions of this Chapter shall not apply where the preferential issue, if any, of specified securities is made to person(s) at the time of lenders selling their holding of specified securities or enforcing change in ownership in favour of such person(s) pursuant to a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the conditions of Regulation 70(6) of these regulations.

Checklist

S No.	Particulars	Remarks
1.	The listed issuer may make a preferential issue only when	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S No.	Particulars	Remarks
	special resolution has been passed by the shareholders of the company. (Note: The PCS may check copy of e-form MGT 14 filed with the ROC.)	
2.	Check whether the additional disclosures as specified in the regulations were also made in the explanatory statement of the notice for the general meeting proposed for passing special resolution.	
3.	To prepared a private placement offer letter in Form No. PAS 4 in Form GNL 4 in accordance with the Companies Act, 2013 and the same has been addressed to the proposed investors / allottees.	
4.	To maintain a register of all the persons, to whom the preferential offer is going to be made in accordance with Form No. PAS 5 of the Companies Act, 2013.	
5.	Check whether the Allotment pursuant to the special resolution in case of preferential issue has been completed within a period of fifteen days from the date of passing of such resolution or the receipt of approval from the stock exchange, whichever is later.	
6.	<p>Where allotment is :</p> <p>I. for consideration other than cash check the following documents</p> <ul style="list-style-type: none"> • Certified copy of valuation report • Certified copy of Shareholders Agreements. • Certified copy of approval letters from the concerned Ministry and RBI if applicable. <p>II. pursuant to CDR Scheme/ Order of High Court/ NCLT/ NCLAT check the following document</p> <ul style="list-style-type: none"> • Certified copy of relevant scheme/ order <p>III. pursuant to conversion of loan of financial institutions check the following document:</p> <ul style="list-style-type: none"> • Certified copy of the Loan Agreement executed by the company. <p>Check if the consideration is paid in cash, it was received from the respective allottee's bank account.</p>	
7.	To check if the allottees have made necessary disclosures under Regulation 29(1)/29(2) of the SEBI (SA ST) Regulations,2011 and Regulation 7 of the SEBI (PIT) Regulations, 2015 within the	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S No.	Particulars	Remarks
	stipulated time to the stock exchanges. To check if the preferential allotment attracts the provisions of the SEBI (SAST) Regulations with regard to the obligation to make an open offer.	
8.	To check if the number of allottees pursuant to one resolution does not exceed 50 and that the total numbers of allottees in preferential allotments in a financial year do not exceed 200.	
9.	Check the copy of the confirmation submitted by the Managing Director/ Company Secretary of the issuer company w.r.t. compliance with the regulations.	
QUALIFIED INSTITUTIONAL PLACEMENT		
1.	Check the copy of special resolution approving the qualified institutional placement passed by its shareholders and Form MGT 14 filed with ROC. To check if the resolution specifically mentions that the allotment is Qualified Institutional Placement.	
2.	Check that the minimum number of allottees for each placement of eligible securities made under qualified institutional placement is not less than: <ul style="list-style-type: none"> • two, where the issue size is less than or equal to two hundred and fifty crore rupees; • five, where the issue size is greater than two hundred and fifty crore rupees: 	
3.	Check the copy of special resolution for allotment with respect to completion of allotment within a period of twelve months from the date of passing of the resolution.	
4.	Check whether the issuer company has complied with Regulation 31 of the SEBI (LODR) Regulations, 2015 with regard to filing of shareholding pattern.	
5.	To check if the Information Memorandum has been privately circulated duly numbered to the prospective investors.	
6.	To check if return of allotment has been filed within the stipulated time with the ROC.	
7.	Check whether the placement document shall be serially numbered and copies shall be circulated only to select investors. (Regulation 84)	
8.	Whether the qualified institutional placement has been made at a price not less than the average of the weekly high and low of the	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S No.	Particulars	Remarks
	closing prices of the equity shares of same class quoted on the Stock exchange within two weeks preceding the relevant date. (Regulation 85)	
9.	The aggregate of the proposed qualified institutions placement and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed five times the networth of the issuer as per the audited balance sheet of the previous financial year. (Regulation 89)	

iv. Issue of Securities through Employee Stock Options

Compliance by an Unlisted Company

A unlisted Company issuing securities to employees under employee stock option scheme has to comply with the provisions of Section 62(1) (b) read with Rule 12 of Companies (Share Capital and Debentures) Rules 2014.

Compliance by a listed Company

A listed Company has to comply with Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014, the provisions of the Listing Regulations, read the provisions of Section 62(1)(b) of the Companies Act, 2013 and rule 12 of Companies(Share Capital and Debentures) Rules 2014.

Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 (these regulations)

The Securities and Exchange Board of India (SEBI) on 28 October 2014 has notified new Regulations called Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 which have replaced the erstwhile ESOP guidelines. The New Regulations are effective from the date of notification of these regulations.

Repeal and Exceptions

- (1) Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 are hereby repealed.
- (2) Notwithstanding such repeal, –
 - (a) prohibition on acquiring securities from the secondary market as provided in SEBI circular CIR/CFD/POLICYCELL/3/2014 dated June 27, 2014 shall continue till the existing schemes are aligned with these regulations;
 - (b) all listed companies having existing schemes to which these regulations apply are required to comply with these regulations in their entirety within one year of the same coming into effect, subject to the following exceptions:
 - (i) trusts holding shares, for the purposes of implementing employee benefits schemes of the company, beyond the permissible limits as provided under these regulations, shall have a period of five years to bring down its holding in shares to

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such limits;

- (ii) trusts holding shares, for the purposes of implementing GEBS or RBS, which exceed ten per cent. of the total value of the total assets of the trust(s) as provided under these regulations, shall have a period of five years to bring down its holding in shares to such limits;
- (iii) for the purposes of sub-regulation (9) of regulation 3 and ensuring compliance with the requirement of maintaining adequate public shareholding, those trusts holding shares of the company which are shown either as 'promoter' or 'public' shareholding, shall be permitted to continue to be shown them as such for a further period of only three years;
- (iv) trustees of a trust may continue to vote in respect of shares held by such trust for a period of three years, commencing from 28th of October, 2014.

Applicability of these regulations

The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock exchange in India, and has a scheme:

- (i) for direct or indirect benefit of employees; and
- (ii) involving dealing in or subscribing to or purchasing securities of the company, directly or indirectly; and
- (iii) satisfying, directly or indirectly, any one of the following conditions:
 - (a) the scheme is set up by the company or any other company in its group;
 - (b) the scheme is funded or guaranteed by the company or any other company in its group;
 - (c) the scheme is controlled or managed by the company or any other company in its group.

Types of schemes covered under these regulations

The provisions of these regulations shall apply to following, -

- (i) employee stock option schemes;
- (ii) employee stock purchase schemes;
- (iii) stock appreciation rights schemes;
- (iv) general employee benefits schemes; and
- (v) retirement benefit schemes.

Treatment of Preferential allotment to employees

- Nothing in these regulations shall apply to shares issued to employees in compliance with the provisions pertaining to preferential allotment as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- The provisions pertaining to preferential allotment as specified in the Securities and

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 shall not be applicable in case of a company issuing new shares in pursuance and compliance of these regulations.

Section 62(1) (b) of the Companies Act, 2013, Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 and the listing agreement are applicable for listed companies while private and unlisted public companies are required to follow the articles of association, the Companies Act, 2013 and the rules made thereunder.

Checklist for compliances under Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 and Companies Act 2013

S No.	Particulars	Remarks
1.	Whether the company has used the direct route or through irrevocable trust route for issue of Employees share Based Benefit Schemes, including ESOPs?	
2.	Whether the implementation through trust was decided upfront at the time of taking approval of the shareholders for setting up of the schemes.	
3.	In case the scheme involves secondary acquisition or gift or both, whether the scheme is mandatorily implemented through trust.	
4.	Whether a director, KMP, promoter, holding/ subsidiary/ associate companies, any relative of director/KMP/ promoter, any person beneficially holder ten per cent or more of the paid up capital of the company is not appointed as trustee.	
5.	Whether approval of shareholders is obtained authorising the trust to implement the scheme.	
6.	Whether the trust deals only in delivery based transactions and not in derivatives.	
7.	Whether secondary acquisition in a financial year by a trust does not exceed two per cent of the paid up capital as at the end of the previous financial year.	
8.	Whether the total number of shares under secondary acquisition held by the trust is within the prescribed limits.	
9.	Whether the trust holds shares acquired through secondary acquisition for a minimum period of six months, subject to exceptions.	

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S No.	Particulars	Remarks
10	Whether the off market transfers by the trust has been made only under circumstances specified in these regulations.	
11.	Whether the trust sells shares in the secondary market only under the circumstances specified under these regulations.	
12.	Whether the company has constituted compensation committee for administration of the scheme.	
13.	Whether the employee is eligible to participate in the scheme. i.e. the employees are permanent employees of the company or its subsidiary or holding company either in India or abroad. Independent Directors and Promoters shall not be allowed to participate in the schemes.	
14.	Whether the scheme is approved by the shareholders through special resolution.	
15.	Check whether the explanatory statement to the special resolution complies with Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014.	
16.	Check whether other procedural aspects as prescribed under Rule 12 of Companies (Share Capital and Debentures) Rules 2014.	
17.	Whether the specified disclosures as prescribed under Rule 12 of Companies (Share Capital and Debentures) Rules 2014 has been made in the Board's Report.	
18.	Whether the company has complied with prescribed norms for varying the terms of the schemes.	
19.	Whether unlisted companies going for IPO, complies with the provisions prescribed with regard to Pre-IPO scheme.	
20.	Whether the board of directors place auditor's certificate, certifying compliance under these regulations, before the shareholders in annual general meeting.	
21.	Whether the trust deed specifies the minimum provisions as specified in the SEBI circular dated 16.06.2015. [Regulation (3)]	
22.	Whether the trust has made disclosures and complied with the other requirements applicable to insiders or promoters under the SEBI (Prohibition of Insider Trading) Regulations, 1992 or	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S No.	Particulars	Remarks
	any modification or re-enactment thereto. (Regulation 3)	
23.	Whether the composition of the Compensation Committee is as specified in the regulations. (Regulation 5)	
24.	Whether the terms and conditions of the scheme, as formulated by the compensation committee in context of the regulation 5(3) includes the provisions as specified by SEBI. (Regulation 5)	
25.	Whether the explanatory statement has the contents as specified in the circular dated 16.06.2015. (Regulation 6)	
26	Whether the notice for passing special resolution for variation of terms of the schemes discloses full details of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation. (Regulation 7)	
27	Whether the company has undergone repricing of the options, SAR or shares. (Regulation 7)	
28.	In case of winding up of the schemes being implemented by a company through trust, whether the excess monies or shares remaining with the trust after meeting all the obligations, if any, has been utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee (Regulation 8)	
29.	Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person. (Regulation 9)	
30.	Whether any person other than the employee to whom the option, SAR or other benefit is granted is entitled to the benefit arising out of such option, SAR, benefit etc. (Regulation 9) (Note: In case of ESOS or SAR, under cashless exercise, the company may itself fund or permit the empaneled stock brokers to fund the payment of exercise price which shall be adjusted against the sale proceeds of some or all the shares, subject to the provisions of the applicable law or regulations.)	
31.	Whether the option, SAR, or any other benefit granted to the employee has been pledged, hypothecated, mortgaged or otherwise alienated in any other manner. (Regulation 9)	

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S No.	Particulars	Remarks
32.	Whether any event of death of an employee has occurred? (Regulation 9)(Note: In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall vest in the legal heirs or nominees of the deceased employee.	
33.	Whether any employee suffers a permanent incapacity while in employment? (Regulation 9) (Note: In case the employee suffers a permanent incapacity while in employment, all the options, SAR or any other benefit granted to him under a scheme as on the date of permanent incapacitation, shall vest in him on that day.)	
34.	Whether any new issue of shares is made under any scheme? (Regulation 10) If yes, whether the shares so issued have be listed immediately in any recognised stock exchange where the existing shares are listed, subject to the following conditions: (Regulation 10) a. Scheme is in compliance with these regulations b. A statement as specified by SEBI in this regard, is filed and the company has obtained an in-principle approval from the stock exchanges	
35.	Whether the information required in the statement to be filed with Stock Exchange(s) is as per the circular CIR/CFD/POLICY CELL/2/2015 dated 16.06.2016. (Regulation 10) When an exercise is made, whether the company has notified the concerned stock exchange as per the statement as specified by SEBI in this regard. (Regulation 10)	
36.	Whether the shares arising after the initial public offering (“IPO”) of an unlisted company, out of options or SAR granted under any scheme prior to its IPO to the employees has been listed immediately upon exercise in all the recognised stock exchanges where the shares of the company are listed subject to compliance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and where applicable, regulation 12(1). (Regulation 11)	
37	Whether the company has appointed a registered merchant banker for the implementation of schemes in accordance with	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S No.	Particulars	Remarks
	clause (b) of regulation 10. (Regulation 12)	
38.	In case the company has passed a resolution for the schemes under these regulations, whether the board of directors ,at each annual general meeting have placed before the shareholders a certificate from the auditors of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting. (Regulation 13)	
39.	In addition to the information that a company is required to disclose, in relation to employee benefits under the Companies Act, 2013, whether the board of directors of such a company have disclosed the details of the scheme(s) being implemented, as specified by SEBI in this regard. (Regulation 14)	

Compliance with respect to specific schemes

Employee Stock Option Scheme

S No.	Particulars	Remarks
1.	Whether the minimum vesting period is one year from the date of grant of options.	
2.	Whether the disclosures specified have been made to prospective option grantees.	
3.	Whether employee does not receive dividend or vote till the exercise of option.	
4.	Whether the disclosure document is with reference to the circular dated 16.06.2015. (Regulation 16)	
5.	Whether the company has specified the lock-in period for the shares issued pursuant to exercise of option. (Regulation 18)	

Employee Stock Purchase Scheme

1.	Whether shares issued under ESPS is locked in for a minimum period of one year from the date of allotment	
2.	Whether ESPS forming part of public issue are issued at the same price as in the public issue?	
3.	Whether ESPS scheme contains the details of the manner in which the scheme will be implemented and operated	

Stock Appreciation Rights Scheme(SARS)

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S No.	Particulars	Remarks
1.	Whether SARS contains the details of the manner of implementation	
2.	Whether specified disclosures has been made to the prospective SAR grantees	
3.	Whether the disclosure document is with reference to the circular dated 16.06.2015. (Regulation 23)	
4.	Whether the minimum vesting period is of one year from the date of grant of SAR. (Regulation 24)	
5.	Whether the employee has the right to receive dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of SAR granted to him. (Regulation 25)	
General Employee Benefits Scheme(GEBS)		
1.	Whether GEBS contains the details of the manner of implementation	
2.	Whether, the shares of the company or shares of its listed holding company does not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS, at any point of time.	

RETIREMENT BENEFIT SCHEME (RBS)

Whether the retirement benefit scheme contains the details of the benefits under the scheme and the manner in which the scheme shall be implemented and operated.

S. No.	Particulars	Remarks
1.	Whether the shares of the company or a share of its listed holding company does not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of RBS at any point of time?	
2.	Form No. PAS. 3 as per Companies (Prospectus and Allotment of Securities) Rules, 2014, Form No. SH.7 as per Companies (Share Capital and Debentures) Rules, 2014 and Form No. MGT.14 as per Companies (Management and Administration) Rules, 2014, as applicable, has been filed with ROC.	
3.	Check if listing approval by stock exchange(s) was granted for shares arising after IPO out of options granted under a scheme	

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S. No.	Particulars	Remarks
	prior to the IPO, upon exercise subject to compliance with SEBI (ICDR) Regulations,2009.	
4.	Check the copy of the in principle approval granted by the stock exchange under) Regulation 28 of the SEBI (LODR) Regulations/Clause 24(a) of the listing agreement.	
5.	Check compliance with Relevant clauses of listing agreement / Listing Regulations.	

Checked by:

Reviewed by:

Date:

Date:

v. SEBI (Issue and Listing of Debt Securities) Regulations, 2008

These regulations are applicable to:

- (a) public issue of debt securities and
- (b) listing of debt securities issued through public issue or on private placement basis on a recognized stock exchange.

“Debt Securities” means non-convertible debt securities which create or acknowledge indebtedness and includes debentures, bonds and such other securities of a body corporate or a Trust registered with SEBI as a Real Estate Investment Trust or an Infrastructure Investment Trust, or any statutory body constituted by virtue of a legislation, whether constituting a charge on the assets of the body corporate or not, but excludes bonds issued by Government or such other bodies as may be specified by SEBI, security receipts and securitized debt instruments;

a. Checklist for compliances under SEBI (Issue and Listing of Debt Securities) Regulations, 2008

For Non-Convertible Debt securities

S. No.	Particulars	Remarks
1.	There is no restraining, prohibiting or debarring order against the company or any of its promoters by SEBI or any other regulatory authority. (Note: PCS may mention the details of the order, if any, in the audit report as a qualification).	
2.	The company has appointed one or more merchant bankers in case of a public issue and a debenture trustee registered with SEBI.	
3.	The company has obtained credit rating from at least one	

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S. No.	Particulars	Remarks
	rating agency registered with SEBI and disclosed in offer document. (Note: The PCS may check the copy of the credit rating certificate for verifying the same)	
4.	The company has obtained in-principle approval from the recognized stock exchange to list its non-convertible debt securities.	
5.	The company has entered into a tripartite agreement with the RTA and both the depositories. (Note: The PCS may check the agreement for verifying the same.)	
6.	The Debenture Trust Deed has been executed in Form No. SH.12 as per Companies (Share Capital and Debentures) Rules, 2014, by the company in favour of the debenture trustees within three months of closure of the issue of offer.	
7.	Debenture Redemption Reserve has been created as provided in sub-rule (7) of Rule 18 of Companies (Share Capital and Debentures) Rules, 2014.	
8.	The final offer document has been filled with the Registrar of Companies, SEBI and designated stock exchange.	
9.	Whether the issuer filing a shelf prospectus, has filed a copy of an information memorandum with the recognized stock exchanges and SEBI, immediately on filing the same with the Registrar. (Regulation 6A)	
10.	The information memorandum has contained the disclosures as specified in Companies Act, 1956 or Companies Act, 2013, whichever is applicable and rules made thereunder and has also included disclosures regarding summary term sheet, material updations including revisions in ratings, if any along with the rating rationale and financial ratios specified in Schedule I of SEBI (Issue and Listing of Debt Securities) indicating the pre and post issue change.	
11.	In case the 75% of minimum subscription of the base issue size has not been received by the company, the entire money has been refunded within 12 days from the date of	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	<p>the closure of the issue.</p> <p>(Note: The PCS may check from the statement of escrow account which is opened for the purpose of debt issue)</p>	
12.	In case there has been a delay in the aforesaid refund, the company has returned the subscription amount along with interest at the rate of 15% per annum for the delayed period.	
13.	The company has retained the over subscription money up to the maximum of 100% of Base issue size or any lower limit as specified in the offer document.	
14.	If the company has filed shelf prospectus, then it has retained over subscription up to the rated size, as specified in their shelf prospectus. (It is to be noted that certain entities are required to file shelf prospectus as specified in Regulation 6A)	
15.	The company has created a charge or security, if any, in respect of secured debt securities has been disclosed in the offer document along with its implication e-form CHG-9 has been filed with the ROC regarding creation of charge on the debt securities.	
16.	<p>In case of rollover of debt securities, it has been approved by the holder of the debt securities by a passing a special resolution and e- form MGT – 14 has been filed with ROC for such purpose.</p> <p>Whether prior notice of 21 days was given containing the disclosure regarding the credit rating so obtained?</p>	
17.	In case the holders of the debt securities have not given their positive consent to the roll over, the company has redeemed the debt securities of all the debt securities holders.	
18.	The Company has obtained final listing and trading approval from the stock exchanges where it proposes to list its securities.	
19.	The company has passed resolution by the Board of Directors for allotment of securities specifically making a mention of total number of securities allotted / allocated by it.	

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S. No.	Particulars	Remarks
20.	<p>Allotment is completed within 12 days of the closure of the issue and Form No. PAS 3 regarding allotment of debentures as per Companies (Prospectus and Allotment of Securities)</p> <p>Rules, 2014 is filed with the ROC within 30 days of allotment.</p>	
21.	Letter from Registrars and lead manager confirming dispatch of share / debenture/ warrant certificates, allotment advice, refund orders, underwriting commission, uploading of electronic credit of Securities, uploading of ECS/NEFT/ RTGS credits and brokerage warrants.	
22.	<p>Certificate from the Registrar reconciling the total securities allotted with the total securities credited with the depositories, and securities that have failed to be credited.</p> <p>[Note: The PCS may check the copy of the basis of allotment.]</p> <p>In case credit rating has been obtained from more than one agencies, whether all the ratings, including the unaccepted ratings have been disclosed in the offer document. (Regulation 4)</p>	
23.	Whether debt securities have been issued for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management. (Regulation 4)	
24.	Whether any default has been made in payment of interest on debt securities or redemption thereof or in creation of security as per the terms of the issue of debt securities. (Regulation 16)	
25.	If dividend has been paid, whether prior approval of debenture trustee has been obtained. (Regulation 16)	
26.	Whether the offer document contains all the material disclosures which are necessary for the subscribers of the debt securities to take an informed investment decision. (Regulation 5)	
27.	Whether the draft offer document has been filed through the lead merchant banker. (Regulation 6)	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
28.	Whether the lead merchant banker, prior to filing of the offer document with the Registrar of Companies has, furnish to SEBI a due diligence certificate as per Schedule II of the regulations. (Regulation 6)	
29	Whether the issuer has made an advertisement in an national daily with wide circulation, on or before the issue opening date? (Regulation 8)	
30.	Whether the advertisement along with other things contains the disclosures as per Schedule IV and is in compliance with other requirements of Regulation 8?	
31.	Whether the debt securities have been redeemed in terms of the offer document. (Regulation 18)	
32.	Where any right to recall or redeem prior to maturity is reserved or provided whether provisions of Regulation 17A are complied.	
33.	Where any security is created in respect of secured debt securities, whether it is disclosed in the offer document along with its implications. (Regulation 17)	
34	Whether issue proceeds were kept in an escrow account until the documents for creation of security as stated in the offer document, are executed. (Regulation 17)	
35	Where issuer debt securities to the public through the on-line system of the designated stock exchange have complied with the relevant applicable requirements specified by SEBI. (Regulation 10)	
36	Whether every application form issued by the issuer is accompanied by a copy of the abridged prospectus. (Regulation 9)	

Checked by:

Reviewed by:

Date:

Date:

Note:

When an issuer making public issue of debt securities may recall such securities prior to maturity date at his option (call) or provide such right of redemption prior to maturity date (put) to all the investors or only to retail investors, at their option, subject conditions specified in Regulation 17A.

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When an issuer carries out consolidation and re-issuance of its debt securities, the conditions specified in regulation 20A has been complied with.

An issuer making a private placement of debt securities and seeking listing thereof on a recognised stock exchange may file a Shelf Disclosure Document containing disclosures as provided in Schedule I. In such a case conditions specified in Regulation 21 A has been complied with.

b. Checklist for issuance of Non-Convertible Debentures on private placement basis under SEBI (Issue and Listing of Debt Securities) Regulations, 2008

“Private placement”* means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer cum application and which satisfies the conditions specified in section 42 of the Companies Act, 2013.

A company issuing NCDs on private placement basis has to comply with Section 42 and Rule 14 of the companies (Prospectus and Allotment of securities) Rules, 2014 and RBI guidelines issued for NBFCs, in addition to SEBI (Issue and Listing of Debt Securities) Regulations, 2008. The companies Act, 2013 provisions are being covered elsewhere.

S. No.	Particulars	Remarks
1.	The company has passed a resolution for issuance of NCDs in its board meeting. (Note: The PCS may check the copy of the resolution passed.)	
2.	The company has appointed a debenture trustee and Registrar and share Transfer Agents.	
3.	The company has executed tripartite agreement with the RTA and both the Depositories for issuance of NCDs in the demat form.	
4.	The company has obtained One- time registration for online complaint redressal system-SCORES with SEBI.	
5.	The company has obtained credit rating from at least one credit rating agency registered with SEBI.	
6.	In case of revision in rating, during periodical review by the credit rating agency, the same has been intimated to the stock exchanges where the debt securities are listed, the investors and the perspective investors.	
7.	The company has obtained final listing approval from the Stock Exchange to list its Debt securities.	
8.	The company has made disclosures in a disclosure document as specified as scheduled I of these regulations and the same has	

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S. No.	Particulars	Remarks
	been disclosed on the website of the Stock Exchange where such securities are proposed to be listed.	
9.	The relevant documents have been submitted to the trustee for security creation.	
10.	The company has complied with the conditions relating to the issue of International Securities Identification Number as may be specified by SEBI (Regulation 20B)	
11.	<p>A press release has been issued for disclosing the information to the investors and the general public in case of any of the following events by the Debenture Trustee:</p> <ul style="list-style-type: none"> a) default by issuers to pay interest on debt securities or redemption amount; b) failure to create a charge on the assets; c) revision of rating assigned to the debt securities; (Note : The PCS may check the copy of the press release) 	
12.	The information as required under point 10 above has also been placed on the websites, of the debenture trustee, the company and the stock exchanges.	
13.	The company, the debenture trustee and stock exchange has disseminated all the information and reports on debt securities including compliance reports filed by the issuers and the debenture trustee regarding the debt securities to the investor and the general public by placing them on their websites.	
14.	<p>The company has filed the following e- forms with the Registrar of Companies:</p> <ul style="list-style-type: none"> i. MGT-14 with respect to the Board resolution passed for issuance of NCDs on private placement basis. ii. PAS -3 for allotment of debentures iii. PAS – 4 with respect to private placement offer letter iv. PAS-5 with respect to complete record of placement offer. v. CHG-9 with respect to creation & charge on security, if any. 	
15.	<p>The company has complied with part B of the debt listing agreement.</p> <p>(Note: The PCS may check the copy of information memorandum</p>	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	filed with the stock exchange for complete verification of each particular information and default, if any, made by the company.	

vi. SEBI (Registrar to an Issue and Share Transfer Agents) Regulations, 1993

All the work related to share registry in terms of both physical and electronic is maintained at a single point i.e. either in-house by the company or by a SEBI registered R & T Agent. The registrars and share transfer agents (RSTA) are required to:

- maintain records of all the shares dematerialized, rematerialized and details of all securities declared to be eligible for dematerialization in the depositories and ensure that dematerialization of shares shall be confirmed/created only after an in-principle approval of the stock exchange/s where the shares are listed and the admission of the said share with the depositories have been granted.

Checklist for compliances under SEBI (Registrar to an Issue and Share Transfer Agents) Regulations, 1993

S. No.	Particulars	Remarks
1.	The company has appointed an RTA in accordance with SEBI regulations, or is handling the share Transfer in-house. In case the number of shareholders are more than 1,00,000 in number the in house facility has registered itself as a Share Transfer Agent with SEBI	

Checked by:

Reviewed by:

Date:

Date

vii. SEBI (Delisting of Equity Shares) Regulations, 2009

Delisting of securities means permanent removal of securities of a listed company from a stock exchange. Delisting can be voluntary or compulsory. In voluntary delisting, a listed company decides on its own to permanently remove its securities from a stock exchange by complying with SEBI (Delisting of Equity Shares) Regulations, 2009. Compulsory delisting refers to permanent removal of securities of a listed company from a stock exchange as a penalizing measure at the behest of the stock exchange for not making submission / compliance with various requirements set out in the listing agreement within the time frame prescribed.

Voluntary Delisting can be again of two types (a) with exit opportunity- In this case the equity shares would not be listed on any recognized stock exchange having nationwide trading terminals after the proposed delisting (b) where no exit opportunity is required- In this case the equity shares would remain listed on any recognized stock exchange which has nationwide trading terminals after the proposed delisting. In this regard, a PCS has to first check whether the company has used the exit opportunity method or no exit opportunity method under voluntary delisting. A company desirous of delisting its securities has to comply with the SEBI (Delisting of Equity Shares) Regulations, 2009.

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

The Regulations shall not apply to securities listed without making public issue on the institutional trading platform of recognised stock exchanges.

Note: PCS may visit the website of stock exchanges, for example, NSE and BSE to check whether a company has been delisted or not. The stock exchange maintains a separate section where the name of the companies which are delisted from their stock exchange, is displayed.

Checklist for compliances under SEBI (Delisting of Equity Shares) Regulations, 2009

S. No.	Particulars	Compliance	Remarks
I. Compulsory delisting			
1.	Check the reasons for which action has been taken by the recognized stock exchange for compulsory delisting. In case there is compulsory delisting, the company/ whole time directors/ its promoters/ companies which are promoted by any of them has not accessed the securities market directly or indirectly or sought listing for any equity shares for a period of 10 years from the date of such delisting.		
II. Voluntary delisting - where no exit opportunity is required			
2.	Submission of the resolution approving the delisting scheme as passed by the Board of Directors of the Company, in compliance with Regulation 7(1) (a) to stock exchange.		
3.	The company has given public notice of proposed delisting in at least one English national daily and one Hindi national daily with wide circulation and one regional newspaper of the region where the concerned recognised stock exchange is located. <i>(Note: The PCS may check the copies of newspaper clippings)</i>		
4.	The public notice contains: (i) the name of the recognized stock exchanges from which the equity shares of the company are intended to be delisted. (ii) The reasons for such delisting. (iii) The fact of continuation of listing of equity shares on recognized stock exchanges having nationwide trading terminals.		
5.	An application has been made to the concerned recognized stock exchange for delisting of its equity shares.		

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Compliance	Remarks
6.	The application has been disposed of within a period not exceeding 30 days from the date of receipt of completed application.		
7.	The company has disclosed the fact of delisting in the first annual report of the company prepared after such delisting.		
8.	Check the conditions for delisting.		
III. Voluntary delisting - where exit opportunity is given			
9.	The application for delisting of equity shares was made to the concerned stock exchange.		
	Certified copy of the resolution passed by the Board of Directors approving (Prior approval) the delisting scheme is in compliance with Regulation 8 (1) (a), and has been submitted to stock exchange. Before granting prior approval the board of directors have complied with conditions relating to disclosures, appointment of merchant banker 's etc. specified in regulation 8.		
10	The company has intimated the Stock exchange regarding the outcome of the Board Meeting.		
11.	The company has appointed merchant bankers subject to conditions as specified.		
12.	Prior approval of members has been obtained by postal ballot for the delisting process with at least two third majorities.		
13.	Prior approval of members has been obtained by postal ballot for the delisting process only if the votes cast by public shareholders in favour of the proposal amount to at least two times the number of votes cast by public shareholders against it.		
14.	Submission of application to stock exchange for in-principle approval for delisting of equity shares along with the copy of the audit report as required under regulation 55A of SEBI (Depositories and Participants) Regulations, 2009.		
15.	The in-principle approval for delisting has been received from the stock exchange. (The application shall be disposed off by the stock exchange within a period not exceeding five working days from the date of receipt of		

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Compliance	Remarks
	application)		
16.	A public announcement has been made in one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region regarding the delisting proposal, either by promoter company or acquirer, within one working day from the date of receipt of principal approval.		
17.	The company has disclosed all the material information in the public announcement including the information specified in Schedule I of the Regulations. (Note: Refer Schedule I)		
18.	The public announcement is signed and dated by the promoters who are making the delisting offer. Where the promoter is a company, the public announcement has been dated and signed on behalf of the Board of directors of the company by its manager or secretary, if any, and by not less than two directors of the company, one of whom shall be a managing director where there is one.		
19.	The company has complied with the conditions relating to letter of offer, bidding requirements etc. as specified in regulation 12 and 13 respectively.		
20.	Before making the public announcement the provisions related to escrow account contained in regulation 11 have been complied with.		
21	The public announcement was made within five working days of the closure of the offer regarding: (i) Success of the offer under regulation 17. (ii) Failure of the offer under regulation 19. (iii) Rejection under regulation 16 of the final price discovered under Schedule II by the promoters.		
22.	Regulation 20 regarding payment of consideration on success of the offer and return of equity shares have been complied with.		
23.	The final application has been made to the concerned stock exchange(s) for delisting of equity shares.		
24.	Check the order of the recognized stock exchange		

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Compliance	Remarks
	granted to the company for delisting.		
25.	In case the number of the paid up capital is not exceeding Rs.10 crores and the net worth is not exceeding Rs.25 crores, whether the company has followed the procedure for small companies.		
26.	In the procedure for small companies is followed, whether the company has written to the public shareholders and 90% of them have agreed to delist the company or remain shareholders of a delisted entity.		
27.	Whether the promoter has provided an exit opportunity, accepted the price and paid the consideration.		
28.	Whether application has been made for final approval for the delisting within 1 year of the resolution.		
29.	The company has complied with the conditions relating to offer price as specified in regulation 15 respectively		
30.	The company has complied with the conditions relating to Minimum number of equity shares to be acquired as specified in regulation 17 respectively.		
31.	Check whether the payment of consideration for shares accepted under sub-regulation (1) of regulation 21 made out of the balance amount lying in the escrow account.		
32.	If a company delist its equity shares from all the recognized stock exchanges where they are listed or from the only recognized stock exchange where they are listed check whether all public shareholders holding equity shares of the class which are sought to be delisted are given an exit opportunity in accordance with Chapter IV		

Checked by:

Reviewed by:

Date:

Date:

viii. SEBI (Buyback of Securities) Regulations, 1998

Buy-back of shares means the purchase by the company of its own shares. Buyback of equity shares is an important mode of capital restructuring. It is a corporate financial strategy which involves capital restructuring and prevalent globally with the underlying objectives of increasing earnings per share, averting hostile takeovers, improving returns to the stakeholders and realigning the capital structure. Buy Back of securities can be by listed companies and private and unlisted public companies.

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

Buy-back of securities by a listed company

Buy-back of Securities by listed Companies is governed by SEBI (Buy-back of Securities) Regulations, 1998, the Companies Act, 2013 and the rules made thereunder. A listed company may buy-back its shares or other specified securities by any one of the following methods: –

- (a) from the existing security-holders on a proportionate basis through the tender offer;
- (b) from the open market through –
 - (i) book-building process,
 - (ii) stock exchange;
- (c) from odd-lot holders.

Provided that no offer of buy-back for fifteen per cent or more of the paid up capital and free reserves of the company shall be made from the open market.

Buy-back of Securities by a private and unlisted public company

Buy- back of its own securities by a private and unlisted public company is governed by the Companies Act, 2013 and the rules made thereunder. MCA has notified rules under the Companies Act, 2013. For buy-back of securities, provisions of Chapter IV of Companies Act, 2013 consisting of Sections 68, 69 and 70 and Rule 17 of Companies (Share Capital and Debentures) Rules, 2014 will be applicable.

Checklist for compliance requirement under SEBI (Buyback of Securities) Regulations, 1998 and the Companies Act, 2013

Buyback of Securities by a listed company

S. No.	Particulars	Remarks
1.	The method used for buy-back of securities is in compliance with regulation 4.	
2.	The buy-back of securities is authorized by the articles of association and if not, they were amended and special resolution passed for the amendment is filed with the stock exchange and ROC.	
3.	Company has filed Form No.MGT.14 as per Companies (Management and Administration) Rules, 2014 with the ROC in respect of the special resolution or Board Resolution.	
4.	In case of buy-back where the first proviso of Section 68(2) (b) of Companies Act, 2013 is applicable, board resolution has been passed approving the buy-back and the resolution has been filed with the stock exchange and SEBI.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
5.	<p>The company has filed a letter of offer in Form No. SH.8 as per Companies (Share Capital and Debentures) Rules, 2014 with fee with ROC before the buy-back of securities. Further, such letter of offer has been dated and signed on behalf of the Board of Directors of the company, by not less than two directors, one of whom shall be the managing director, where there is one.</p> <p>Whether Form SH 9 has been filed for the declaration of Insolvency.</p>	
6.	<p>The explanatory statement has been annexed to the notice of the general meeting pursuant to section 102 of the Companies Act, 2013 and contains the disclosures as specified in Part A of Schedule II of these regulations.</p> <p>(Note: Refer Part A of Schedule II)</p>	
7.	<p>The public announcement contains all the material disclosures required under Schedule II of these regulations. Further, the announcement has been made in at least one English national daily, one Hindi national daily and a regional language daily all with wide circulation at the place where the registered office of the company is situated within 2 Working days of passing of special resolution.</p>	
8.	<p>In case of buy-back through stock exchanges, the public announcement contains details of the brokers and stock exchanges through which the buy-back of shares or other specified securities would be made. The acquirer or promoter has facilitated tendering of shares by the shareholders and settlement of the same through the stock exchange mechanism specified by SEBI.</p>	
9.	<p>In case of buy-back through book building process, the public announcement contains the detailed methodology of the book-building process, the manner of acceptance, the format of acceptance to be sent by the security-holders pursuant to the public announcement and the details of bidding centres.</p>	
10.	<p>The soft copy of public announcement has been filed with SEBI through the merchant banker. (Note: The company shall within five working days of the public announcement filed with SEBI a draft-letter of offer along with soft copy, containing disclosures as specified in Schedule III through a</p>	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	merchant banker who is not associated with the company.)	
11.	Buy-back has been made on a stock exchange having nation-wide trading terminals.	
12.	In case of buy-back through book building process, the book- building process has been made through an electronically linked transparent facility.	
13.	The company has filed with SEBI the declaration of solvency under these regulations pursuant to Section 68 (6) of the Companies Act, 2013 and with ROC in Form No. SH.9 as per Companies (Share Capital and Debentures) Rules, 2014.	
14.	The declaration of solvency is signed and verified by at least two directors, one of whom is the managing director of the company, if any and verified by an affidavit.	
15.	The company maintains a record or register of security certificates which have been cancelled and destroyed in Form No. SH-10 as per Companies (Share Capital and Debentures) Rules, 2014.	
16.	The company has opened an escrow account and special account as required under these Regulations.	
17.	The certificate that the securities bought back have been extinguished within seven days of the last date of completion of buy-back is duly certified and verified by– (i) the registrar and where there is no registrar, by the merchant banker; (ii) two directors of the company one of whom shall be a managing director where there is one; (iii) the statutory auditor of the company.	
18.	The certificate of extinguishment has been filed with SEBI and the stock exchange on a monthly basis by the seventh day of the month succeeding the month in which the securities certificates are extinguished and destroyed.	
19.	The company has filed with SEBI, a return containing such particulars relating to buy-back of securities within 30 days of completion of buy-back and with the ROC in Form No.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	SH.11 as per Companies (Share Capital and Debentures) Rules, 2014.	
20.	Return filed with ROC in Form No. SH.11 include certificate of compliance in Form No. SH.15 signed by two directors of the company including the managing director, if any, certifying that buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder.	
21.	Whether any buy back offer has been made within one year of the closure of previous buyback offer? (Section 68)	
22.	Whether shares were fully paid up at the time of buy back? (Section 68)	
23.	Whether the debt equity ratio was in excess of 2:1 after the completion of buyback? (section 68)	
24.	Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub- section (1) of section 62 or other specified securities within a period of six months except by way of a 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.	
25.	Where a company purchases its own shares out of free reserves or securities premium account, whether a sum equal to the nominal value of the shares so purchased has been transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.	
26.	A company, authorized by a resolution passed by the Board of Directors at its meeting to buy back, its shares or other specified securities under section 68 of the Companies Act, 2013 shall file a copy of the resolution, with SEBI and the stock exchanges, where the shares or other specified securities of the company are listed, within two working days of the date of the passing of the resolution.	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
27.	A copy of the resolution passed at the general meeting under Section 68 of the Companies Act, 2013 shall be filed with SEBI and the stock exchanges where the shares or other specified securities of the company are listed, within seven days from the date of passing of the resolution.	

Checked by:

Reviewed by:

Date:

Date:

ix. SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

GENERAL COMPLIANCES OF LISTED ENTITIES

S. No.	Particulars	Remarks
1.	Listed Entity has appointed a qualified Company Secretary as Compliance Officer.	
2.	Listed Entity has either i. appointed a share transfer agent or ii. manage the share transfer facility in-house iii. Where facility is managed in-house and total number of shareholders exceeds one lakh then check that listed entity has recourse to any of the following two options: iv. Register itself with SEBI as Category II share transfer agent v. Appoint Registrar to the issue and share transfer agent registered with SEBI.	
3.	Check that compliance certificate has been submitted to the exchange by the listed entity, duly signed by the compliance officer and the authorized representative of the share transfer agent, within one month of the end of each half financial year (half financial year implies 1st April to 30th September and 1st October to 31st March) certifying compliance with the regulations w.r.t. share transfer.	
4.	Check the information submitted to credit rating agencies, share transfer agents, debenture trustees etc. are correct and adequate and promptly on request.	
5.	Check in case of any change or appointment of new share	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	transfer agent, the listed entity has enter into tripartite agreement between the existing share transfer agent , the new transfer agent and the listed entity.	
6.	<p>Check if the listed entity has informed about the appointment of New Share Transfer Agent within Seven (7) days of entering into Agreement.</p> <p>The Agreement referred herein-above shall be placed at the subsequent Board Meeting.</p>	
7.	Check that the entity has a proper policy for preservation of documents with respect to their preservation is at least in two categories, permanent and not less than 8 years.	
8.	Check the existence of proper infrastructure for filing of various reports, statements to SEBI or exchange(s) electronically by the listed entity.	
9.	Check the payments w.r.to dividend, interest, redemption or repayment is made by any of the electronic mode approved by RBI such as ECS, NECS, NEFT, RTGS etc. Where it is not possible to use electronic mode of payment, 'payable- at-par' warrants or cheques may be issued, also check when the amount payable is more than Rs. 1500, such warrants or cheques shall be issued only by speed post.	
10.	Check that the listed entity is registered on SCORES platform or such other electronic platform as shall be mandated form time to time in order to handle investor complaints electronically in the manner specified by the SEBI.	
11.	Check that the listed entity has filed a quarterly statement with the recognized stock exchange giving details w.r.to investor complaints received, disposed of, pending etc. within that quarter. To check if the status of the investor complaints are place before each board meeting. To intimate to the Stock Exchange within 21 days from end of the quarter	
12.	Check whether all the Fees and other charges to be paid to the recognized stock exchanges are duly paid.	
13.	To formulate archival policy. The listed entity shall disclose on its website all such events or information which has been disclosed to stock exchange(s) under this regulation, and such disclosures shall be hosted on the website of the listed entity for a minimum	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.	
14.	To frame a policy for determination of materiality of events, based on criteria specified in regulation 30(4)(i), duly approved by its board of directors, which shall be disclosed on its website.	
15.	To check whether all the items to be placed before the Board were placed in appropriate time and schedule	
16.	Check if Regulation 17 to 27 is applicable to the company. They shall not apply, in respect of the listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty five crore, as on the last day of the previous financial year:	
17.	Check the composition of board of directors shall comprise of : <ul style="list-style-type: none"> • At least one woman director • At least 1/2 of the Board is independent in the board, where the chairperson is not a non-executive chairperson • At least 1/3 of the Board is independent , where the chairperson is a non-executive chairperson if the chairperson is non-executive but is a promoter is related to the promoter, the Board comprises of at least 1/2 of independent directors 	
18.	Check that at least 4 board meetings held during the financial year, with a maximum time gap of 120 days between any 2 meetings. Check whether the Board of Directors is reviewing compliance reports pertaining to all laws applicable to the listed entity as well as the steps taken for rectification of instances of non-compliance. Check whether Board of Directors is satisfied that the succession plans are in place for Appointment of Board of Directors and Senior Management.	
19.	Check that the boards of directors have laid down a code of conduct for all members of board of directors and senior management of listed entity that suitably incorporates the duties of independent directors as laid down in the Companies Act, 2013. The confirmation to the Code of Conduct from all the directors is taken in the first Board Meeting of the Year	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
20	Check that the information is placed before the board of directors as specified in Part A of Schedule II	
21.	Check that the compensation paid to non-executive directors including independent directors other than sitting fees is approved by shareholders in the general meeting.	
22.	Check that independent directors are not entitled to any stock option.	
23.	Check that in the performance evaluation of independent directors, directors who are subject to evaluation shall not participate.	
24.	Check that the chief executive officer and the chief financial officer has provided the compliance certificate to the board of directors as specified in Part B of Schedule II.	
25.	Check that the role of the Audit Committee as specified in Par C of Schedule C is duly complied with.	
26.	<p>Check the constitution of qualified and Independent Audit Committee and following requirements:</p> <ul style="list-style-type: none"> i. Chairperson of the audit committee is an independent director ii. Chairperson was present at AGM to answer shareholders queries iii. Company secretary shall act as the secretary to the audit committee iv. Audit committee meets at least 4 times in a year with a maximum time gap of 120 days between 2 meetings. v. Check if Quorum is present at the Audit Committee meetings 	
27.	<p>Check the constitution of Nomination & Remuneration committee and following points:</p> <ul style="list-style-type: none"> i. Chairperson of the committee is an independent director ii. Chairperson was present at AGM to answer shareholders queries iii. Role of the committee complies with Part D of the Schedule II 	
28.	Check the constitution of Stakeholder Relationship committee and following points:	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	<ul style="list-style-type: none"> i. Committee specifically looks into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders ii. Chairperson of this committee is a non- executive director iii. Role of the committee complies with Part D of the Schedule II 	
29.	<p>Check the constitution of Risk Management committee by the top 100 listed entities.</p> <p><i>Note:</i> Top 100 listed entities are determined on the basis of market capitalization, as at the end of the previous financial year.</p>	
30.	Check the listed entity has formulated a vigil mechanism to provide adequate safeguard against victimization of director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.	
31.	Check that the listed entity has formulated a policy on materiality of related party transactions and dealing with related party transactions (RPTs).	
32.	All RPTs have taken prior approval of audit committee, committee may grant omnibus approval on certain conditions.	
33.	Check that the omnibus approval is specifying certain important points to satisfy that it is in the interest of the entity as mentioned under the regulation.	
34.	All material RPTs have taken prior approval of shareholders through resolution, and all the related parties irrespective of whether they are a party to the transaction have abstained from voting on such resolutions	
35.	All existing related party contracts entered into prior to the date of notification of these regulations and which continue beyond such date were placed for approval of the shareholders in the first AGM subsequent to notification of these regulations.	
36.	<p>Corporate Governance requirements w.r.t. subsidiary of listed entity:</p> <ul style="list-style-type: none"> i. at least one independent director on the BOD of listed entity is the director on the BOD of any unlisted material subsidiary, incorporated in India 	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	ii. minutes of the meeting of BOD of unlisted subsidiary placed at the meeting of the BOD of the listed entity iii. management of unlisted subsidiary periodically give a statement of significant transactions to the BOD of listed entity iv. the listed entity has not made any divestment in the material subsidiary without passing a special resolution in its General Meeting except under a case where it is made under a scheme of arrangement duly approved by a Court/Tribunal v. selling , disposing and leasing of assets amounting to more than 20 % of the assets of material subsidiary on an aggregate basis during a financial year if done, is after taking prior approval of shareholders by way of special resolution unless where it is made under a scheme of arrangement duly approved by a Court/Tribunal	
37.	Obligation w.r.t. Independent Directors - Check the following: <ul style="list-style-type: none"> • Independent Director is not serving in this capacity in more than 7 listed entities • A person who is a whole time director in any listed entity is not is not serving as independent director in more than 3 listed entities • At least one meeting of independent directors is held in a year without the presence of non-independent directors and members of management • Independent director who resigns or is removed from board of the listed entity is replaced by a new independent director not later than the immediate next meeting of the board of directors or 3 months from the date of such vacancy whichever is earlier. 	
38.	To formulate familiarization programmes for independent directors which shall include nature of the industry in which the listed entity operates, business model of the listed entity, roles, rights, responsibilities of independent directors and any other relevant information.	
39.	Obligation w.r.t. employees including senior management, KMPs, directors and promoters – Check the following : Every director shall inform the listed entity about the committee positions he or she occupies in other listed entities and notify	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	changes as and when they take place.	
40.	Check whether the employee including key managerial personnel or director or promoter of a listed entity has entered into any agreement for himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity.	
41.	Check whether such employees have obtained any prior approval for the same from the Board of Directors as well as public shareholders by way of an ordinary resolution.	
42.	<p>Check that Listed entity has submitted a quarterly compliance report on corporate governance to the recognized stock exchange within 15 days from close of quarter, a yearly compliance within 15 days of the end of the financial year and a half yearly report within 15 days of the end of the half year.</p> <p>To lay down procedures to inform members of board of directors about risk assessment and minimization procedures.</p> <p>To formulate a vigil mechanism for directors and employees to report genuine concerns. The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism.</p> <p>The audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature.</p>	
43.	Check that listed entity has before issuing securities, obtained 'in-principle' approval from recognized stock exchange(s) in the manner provided in the Regulations.	
44.	<p>Check that listed entity has given prior intimation (at least 2 working days prior excluding the date of intimation and the date of the meeting) to the stock exchanges where the specified securities are listed about the meeting of the board of directors in which any of the following proposals are considered:</p> <ul style="list-style-type: none"> i. Financial results ii. Buy back of shares iii. Voluntary delisting from the stock exchange iv. Fund raising and for determination of issue price 	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	<ul style="list-style-type: none"> v. Declaration/recommendation of dividend vi. Passing over of dividend vii. Issue of convertible securities viii. Issue of debentures carrying a right to subscribe to equity shares ix. Declaration of bonus securities, where it is a part of agenda of the BOD meeting 	
45.	<p>Check that the listed entity makes a disclosure of following events and information :</p> <ul style="list-style-type: none"> i. All events which are deemed to be material as specified in Part A of schedule III of these Regulations ii. All other events or information which, in the opinion of the board of directors are material 	
46.	<p>Check that the listed entity has submitted to stock exchange(s) a statement showing holding of Specified Securities and shareholding pattern for each class of securities. Following timelines are required to be followed for submission of the statement by the listed entity:</p> <ul style="list-style-type: none"> i. 1 day prior to listing of its securities on the stock exchange(s) ii. Within 21 days from end of each quarter or half year in case of entity listed on SME exchange iii. Within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2 % of total paid-up share capital 	
47.	<p>Check that 100% shareholding of promoter(s) and promoter group is in dematerialized form. To check if 50% of the public shareholding is in demat form. If not whether necessary efforts are being made to dematerialise the securities.</p>	
48.	<p>Check that listed entity comply with circulars or directions issued by SEBI from time to time w.r.to maintenance of shareholding in dematerialized form.</p>	
49.	<p>In the shareholding pattern appearing on the website of the stock exchange where specifies securities of the entity are listed, all entities falling under promoter and promoter group are disclosed separately as per the formats specified by SEBI. (all folios shall be clubbed as one) In case of transmission/ succession/inheritance,</p>	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	the inheritor shall be classified as promoter.	
50.	Where an entity becomes professionally managed and does not have any identifiable promoter, the existing promoters may be re-classified as public shareholders subject to approval of shareholders in a general meeting. <i>Note:</i> Criteria for considering an entity as professionally managed is given in point (6) of Clause 31A of the guidelines.	
51.	Re-classification of promoter as public shareholder is disclosed as a material event to the stock exchange. Such classification is subject to the conditions as mentioned in point (7) of Clause 31A of the guidelines.	
52.	Re-classification of a public shareholder as promoter, requires an open offer to be made in accordance with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.	
53.	Listed entity is required to submit to the stock exchange the following statements on quarterly for public issue, right issue, preferential issue etc. Statement indicating deviations, if any in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice of general meeting Statement indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made by it in offer document and the actual utilization of funds. These statements shall be continued to be given till the time the issue proceeds are fully utilized or the purpose for which these proceeds were raised has been achieved. These statements shall be placed before the audit committee for review and after that submitted to the stock exchange(s) <i>Note:</i> In case of entity is listed on SME exchange, quarterly submission is replaced by half yearly submission.	
54.	Listed entity is required to furnish explanation for the variation specified in above point, in the director's report in the annual report.	
55.	Listed entity is required to prepare an annual statement of funds utilized for purposes other than those stated in the offer	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	document/prospectus/notice, certified by the statutory auditor of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.	
56.	Where the listed entity has appointed a monitoring agency to monitor the utilization of proceeds of a public or right issue, the monitoring report of such agency shall be placed before the audit committee on an annual basis, promptly on its receipt. Entity shall also submit the report to the stock exchange(s).	
57.	Financial results of the listed entity to be prepared on the basis of accrual accounting policy and in accordance with uniform accounting practices and GAAP.	
58.	Limited review or audit reports submitted to the stock exchange(s) on quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of ICAI and holds a valid certificate issued by the Peer Review Board of the ICAI.	
59.	Check submission of Annual Report to the stock exchange within 21 working days of its approval and adoption in AGM.	
60.	Submission of Annual Information Memorandum to the stock exchange.	
61.	Annual Report is sent to the holders of the securities not less than 21 days before the AGM.	
62.	Certificate from PCS is w.r.t. share transfer certificates: to certify that all certificates have been issued within thirty days of lodging for the transfer. Check that the certificate from PCS is obtained within 30 days of end of each half year and same is filed to the stock exchange(s) within 30 days of the end of the half year.	
63.	Check that listed entity has provided the facility of remote e-voting facility to its shareholders, in respect of shareholders resolutions.	
64.	Check that entity has submitted to the stock exchange, details of voting results within 48 hours of its general meeting.	
65.	Check the website of the entity to ensure that it disseminates important information and policies on its website. To also check if the website contains all the disclosures mentioned under the regulation and that it is updated within 2 working days	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

S. No.	Particulars	Remarks
	from the date of such change in content.	
66.	Check that Financial Results of the entity are published in newspaper (in English national daily newspaper and in vernacular language newspaper) within 48 hours of conclusion of the board meeting at which it was approved.	
67.	Check whether minimum public shareholding requirements are complied with.	
68.	To check record date for purposes of payment of interest, dividend and payment of redemption or repayment amount or for such other purposes as specified by the stock exchange.	
69.	Listed entity has to make following intimations to the stock exchange(s): <ul style="list-style-type: none"> i. About the date on or from which the interest on debentures and bonds, and redemption amount of redeemable shares, debentures and bonds shall be payable, at least 11 working days before such date. ii. About its intention to raise funds through new non- convertible debt securities/ preference shares. iii. About the BOD meeting in which recommendation of issue of non-convertible debt securities/preference shares or any matter affecting rights of such security holders are proposed to be considered, at least 2 working days in advance. 	
70.	Check whether entity has promptly informed the stock exchange(s) of all price sensitive information before providing the same to any third party.	
71.	un-audited or audited financial results on a half yearly basis in the format as specified by the Board within forty five days from the end of the half year with stock exchange(s).	
72.	Check the half yearly certificate regarding maintenance of 100% asset cover for listed non-convertible debt securities, issued by PCS.	
73.	Check that proxy forms are sent to holders of non-convertible debt securities /preference shares and such forms are worded in such a manner that holders of these securities may vote either for or against each resolution.	
74.	Whether the entity has transferred any unclaimed interest/ dividend to the 'Investor Education and Protection Fund' set up as per section 125 of the Companies Act, 2013.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
75.	Maintenance of a functional website by the listed entity.	
76.	To check whether the intimation to the debenture trustee is prompt or not. The listed entity to forward to the debenture trustee any such information sought and provides access to relevant books of accounts as required by the debenture trustee.	
77.	To check that the listed Company within two calendar days of the conclusion of the meeting of the board of directors, publish the financial results in at least one English national daily newspaper circulating in the whole or substantially the whole of India.	
78.	Check that the listed entity has given notice in advance of at least seven working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date. To ensure the time gap of at least thirty days between two record dates.	
79.	Check the Credit Rating Certificates obtained by listed entity with respect to securitized debt instruments and same has been periodically reviewed by the credit rating agency.	
80.	Whether email address of grievance redressal division is prominently displayed on entity's website.	
81.	Whether entity provide loan level information and credit rating information to the Investors periodically.	
82.	Whether the payment w.r.t. interest and redemption are made in time.	
83.	Whether any unclaimed interest and principal, remaining as such for a period of 7 years are transferred to Investor Protection and Education Fund.	
84.	Check the following information maintained by the entity: i. Daily Net Asset Value (NAV) ii. Monthly Portfolio iii. Half yearly Portfolio Same is intimated to the recognized stock exchange(s).	
85.	Check the ratings of the scheme whose units are listed on stock exchange(s).	
86.	Check if there is any prohibition order restraining the listed entity from transferring units registered in the name of unit holders and whether it is intimated to the stock exchange(s).	

Checked by:

Date:

Reviewed by:

Date:

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

Compliance calendar under SEBI (LODR) Regulations, 2015

Half Yearly Compliances

S. No.	Particulars	Remarks
1.	Relevant reports, statements, documents and any other documents that were to be filed on the Electronic Platform specified by stock exchange(s) at which the company's securities were listed.	
2.	Payments towards dividend /interest/ redemption/ repayment are made in the manner specified in SEBI (LODR).	
3.	Steps taken to address investors' complaints and filing of statements on the same with stock exchange in time.	
4.	If the provisions relating to Corporate Governance as per SEBI (LODR) 2015 are not applicable, a statement to be issued by the management of the company specifying the non-applicability.	
5.	The Board has periodically reviewed compliance reports pertaining to all laws applicable to the listed entity as well as the steps taken for rectification of instances of non-compliance.	
6.	CEO and CFO have provided the compliance certificate to the board of directors as specified in Part B of Schedule II LODR.	
7.	Documents/ declarations/ Board notes and resolutions/ NRC Committee notes and resolutions examined, Independent Directors appointed by the company have been complying with prescribed obligations	
8.	Documents/ declarations/ Board notes and resolutions/ NRC Committee notes and resolutions, Directors and senior management personnel appointed by the company have been complying with prescribed obligations.	
9.	In-principle approval of recognized stock exchange(s).	
10.	Prior intimation given to the exchange about the Board meetings, Annual General Meetings, Extra-ordinary General Meetings or Postal Ballots, wherever necessary.	
11.	Approvals granted for changes in paid up share capital of the company, if any. Utilisation of funds raised by the company through IPO/ Right/	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	FPO/ further issue and deviations, if any.	
12.	The company had duly sent the documents and information to shareholders.	
13.	Minimum Public Shareholding. - The listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 in the manner as specified by the Board from time to time.	
14.	Compliance with requirement of record date.	
15.	The facility of remote e-voting has been provided to its shareholders. Also, the entity has submitted to the stock exchange details of voting results within 48 hours of its general meeting.	
16.	The company has obtained prior approval of stock exchange for name change.	
17.	Listed entity has maintained functional website complying with requirements.	
18.	Stock Exchanges were duly intimated in time w.r.t. NCD's & NCRPS as per SEBI (LODR).	
19.	100% asset cover was maintained to discharge the principle amount and disclosure was made to stock exchange for the same in time and certificate was submitted to the Stock exchange on timely payments of interest and redemption proceeds.	
20.	Credit Rating obtained was duly reviewed and disclosed to stock exchange.	
21.	Required documents/ intimation are submitted/ made to Debenture Trustees in time.	
22.	Prior approval of Stock Exchanges was taken for material modification, if any, in the structure of security.	
23.	Record Date was fixed and notice was given to stock exchanges in time.	

CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

Compliance calendar under SEBI (LODR) Regulations, 2015

Event based Compliances

S. No.	Particulars	Remarks
1.	Appointment of compliance officer who is a qualified company secretary.	
2.	Appointment of SEBI registered Share Transfer Agent and submission of Compliance Certificate to the Exchange.	
3.	Board approved policy for preservation of documents is in place.	
4.	Payment of applicable listing fees/charges to stock exchanges.	
5.	The Board has approved a code of conduct applicable to all members of the board and senior management of the company. The board approved code of conduct incorporating the duties of independent directors as laid down in the Companies Act, 2013.	
6.	Examined the ESOP policy of the company to satisfy that Independent director is not entitled to any stock option.	
7.	Constitution of the following committees is in compliance with the SEBI (LODR), 2015: <ul style="list-style-type: none"> i. Audit Committee ii. Nomination and Remuneration Committee iii. Stakeholders Relationship Committee iv. Risk Management Committee, if applicable. If the provisions relating to risk management committee are not applicable, a statement issued by the management of the company to that effect is collected. 	
8.	Listed entity has formulated a Vigil Mechanism.	
9.	Board approved policy on Related Party Transactions and compliance.	
10.	Adherence to Corporate Governance requirements with respect to subsidiary of listed entity.	
11.	Board approved policy for determination of materiality of event/information Disclosures made by the company in compliance with its policy on disclosures as stated above.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	Correspondence between the company and stock exchange(s)/ SEBI on disclosures made by the company to satisfy that there is no adverse observations from either stock exchange or SEBI.	
12.	100% promoter shareholding is held in dematerialized form.	
13.	Approval granted by Exchange(s) for Reclassification of promoters, if any.	
14.	The company has obtained Observation letter or No-objection letter from stock exchange for Draft Scheme of Arrangement & Scheme of Arrangement.	

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FOREIGN DIRECT INVESTMENT

Keeping in view the objective of promoting ease of doing business, a need was felt to consolidate the regulations and rationalise them in the light of evolving business environment and changing practices in cross-border transactions relating to external trade and payments.

The Reserve Bank of India, in consultation with the Government of India, has revised the Regulations on foreign investment in India and has repealed and replaced the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 (Notification No. FEMA 20) and Foreign Exchange Management (Investment in a Firm or Proprietary Concern in India) Regulations, 2000 (Notification No. FEMA 24) both dated May 3, 2000 with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 dated November 7, 2017 (Notification No. FEMA 20(R)).

Foreign Investment in India is regulated in terms of clause (b) sub-section (3) of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (FEMA) read with Foreign Exchange Management (Transfer or Issue of a Security by a Person resident Outside India) Regulations, 2017 issued vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017. (Amended upto April 06, 2018)

Foreign Direct Investment' (FDI) means investment through capital instruments by a person resident outside India in an unlisted Indian company; or in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company;

Note: In case an existing investment by a person resident outside India in capital instruments of a listed Indian company falls to a level below 10 percent of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI.

Explanation: Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised

Foreign Direct Investment (FDI) in India is undertaken in accordance with the FDI Policy which is formulated and announced by the Government of India. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India issues a "Consolidated FDI Policy Circular" each year elaborating the policy and the process in respect of FDI in India, that incorporates the amendments made to the regulations. Reserve Bank of India also compiles all the circulars issued, through a master circular and master direction on foreign investment. The latest notification- Master Direction RBI/FED/2017-18/60 FED Master Direction No. 11/2017-18 issued and updated upto April 06, 2018 is available at www.rbi.org.in.

Under the Foreign Direct Investments (FDI) Scheme, investments can be made in shares, mandatorily and fully convertible debentures and mandatorily and fully convertible preference shares of an Indian company by non-residents through two routes.

Automatic Route: Under the Automatic Route, the foreign investor or the Indian company does not require any prior approval from the Reserve Bank or Government of India for the investment.

GUIDANCE NOTE ON SECRETARIAL AUDIT

Government Route: Government Route is the entry route through which investment by a person resident outside India requires prior Government approval. Foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

Government approval is approval from the erstwhile Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India and/ or the erstwhile Foreign Investment Promotion Board (FIPB) and/ or any of the ministry/ department of the Government of India.

Checklist:

S. No.	Particulars	Remarks
I	<p>Ensure that the company is not engaged in the any of the following business activities:</p> <ol style="list-style-type: none"> 1. Lottery Business including Government/ private lottery, online lotteries. 2. Gambling and betting including casinos. 3. Chit funds (except for investment made by NRIs and OCIs on a non-repatriation basis). 4. Nidhi Company. 5. Trading in Transferable Development Rights (TDRs). 6. Real Estate Business or Construction of Farm Houses. ("real estate business" shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014) 7. Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes. The prohibition is on manufacturing of the products mentioned and foreign investment in other activities relating to these products including wholesale cash and carry, retail trading etc. will be governed by the sectoral restrictions laid down in Regulation 16 of FEMA 20(R). 8. Activities/ sectors not open to private sector investment viz., (i) Atomic energy and (ii) Railway operations 9. Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities 	
II	Check whether the company is operational in sectors/activities where in the Foreign investment is	

FOREIGN DIRECT INVESTMENT

S. No.	Particulars	Remarks
	<p>allowed under Government Route:</p> <ul style="list-style-type: none"> i. An Indian company is being established with foreign investment and is not owned by a resident entity or not controlled by a resident entity ii. Whether the control of company, is transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to nonresident entities through amalgamation, merger/demerger, acquisition etc. or iii. The ownership of the company is transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to nonresident entities through amalgamation, merger/demerger, acquisition etc. iv. The ownership of the company is transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to nonresident entities through amalgamation, merger/demerger, acquisition etc. 	
<p>III</p>	<p>Check whether the company has received the foreign investment by issuing capital instruments to the investor.</p> <p>‘Capital Instruments’ means equity shares, debentures, preference shares and share warrants issued by the Indian company.</p> <p>Equity shares: Equity shares are those issued in accordance with the provisions of the Companies Act, 2013 and will include partly paid equity shares issued on or after July 8, 2014.</p> <p>Share warrants: Share warrants issued on or after July 8, 2014 will be considered as capital instruments.</p> <p>Debentures: ‘Debentures’ means fully, compulsorily and mandatorily convertible debentures.</p> <p>Preference shares: ‘Preference’ shares mean fully, compulsorily and mandatorily convertible preference shares.</p> <p>Non-convertible/ optionally convertible/ partially convertible preference shares issued as on and up to April 30, 2007 and optionally convertible/ partially convertible debentures issued up to June 7, 2007 till their original maturity are reckoned to be FDI compliant capital instruments. Non-convertible/ optionally convertible/ partially convertible preference shares issued after April 30, 2007 and optionally convertible/ partially convertible debentures issued after June 7, 2007 shall be treated as debt</p>	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	<p>and shall require conforming to External Commercial Borrowings guidelines regulated under Foreign Exchange Management (Borrowing and Lending in Foreign Exchange Regulations), 2000, as amended from time to time.</p> <p>If So, Whether the company has complied with the requirement of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 as amended from time to time as applicable to the company.</p>	

REPORTING OF FDI INFLOW AND REPORTING OF ISSUE OF ELIGIBLE INSTRUMENTS ONLINE THROUGH DIGITALLY SIGNING

With a view to promoting the ease of reporting of transactions under foreign direct investment, the Reserve Bank of India, under the aegis of the e-Biz project (Secure one-stop-shop for all investment and business related information and services 24X7 on a single portal) of the Government of India has enabled the filing of the following returns with the Reserve Bank of India viz. Advance Remittance Form (ARF)-used by the companies to report the foreign direct investment (FDI) inflow to RBI; FCGPR Form-which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the abovementioned FDI inflow and the FCTRS Form which is submitted to RBI for transfer of securities between resident and person outside India.

The design of the reporting platform enables the customer to login in to the e-Bizportal, download the reporting forms (ARF, FCGPR and FCTRS), complete and then upload the same onto the portal using their digitally signed certificates. The Authorized Dealer Banks (ADs) will be required to download the completed forms, verify the contents from the available documents, if necessary by calling for additional information from the customer and then upload the same for RBI to process and allot the Unique Identification Number (UIN).

The following documents should be submitted along with the ARF:

- (a) copy/ies of the FIRC/s (Foreign Inward Remittance Certificate evidencing the receipt of the remittance
- (b) Know Your Customer (KYC) report on the non-resident investor from the overseas bank remitting the amount in the mentioned form

ARF would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number (UIN) for the amount reported.

Steps involved

Step 1: Visit eBiz site

Step 2: Register as a New Member

Step 3: Register Organization

FOREIGN DIRECT INVESTMENT

Step 4: Download Form

Step 5: Fill the e-form

Step 6: Upload and Submit Form

Step 7: Make payment

Step 8: Check status (with e-biz with application number generated).

Vide Circular No. 40 dt. February 01, 2016 issued by R.B.I. the physical filing of forms ARF, FC- GPR and FC-TRS stands discontinued beginning February 08, 2016 and forms submitted in online mode only through e-Biz portal will be accepted.

Permitted Investments by Persons Resident Outside India

Unless otherwise specifically stated in Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 & relevant schedules (Amended up to April 06, 2018), any investment made by a person resident outside India shall be subject to the entry routes, sectoral caps or the investment limits, as the case may be, and the attendant conditionality for making such investment as laid down in these Regulations. A person resident outside India may make investment as stated hereinafter

1. Subscribe/ purchase/ sale of capital instruments of an Indian company (Schedule 1)
2. Purchase/ sale of capital instruments of a listed Indian company on a recognised stock exchange in India by Foreign Portfolio Investors (Schedule 2)
3. Purchase/ sale of capital instruments of a listed Indian company on a recognised stock exchange in India by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis (Schedule 3)
4. Purchase/ sale of Capital Instruments of an Indian company or Purchase / Sale of Units or contribution to capital of a LLP or a firm or a proprietary concern by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on a Non-Repatriation basis (Schedule 4)
5. Purchase/ sale of securities other than capital instruments by a person resident outside India (Schedule 5)
6. Investment in a Limited Liability Partnership (LLP) (Schedule 6)
7. Investment by a Foreign Venture Capital Investor (FVCI) (Schedule 7)
8. Investment in an Investment Vehicle (Schedule 8)
9. Issue/ transfer of eligible instruments to a foreign depository for the purpose of issuance of Depository Receipts (DRs) by eligible person(s) (Schedule 9)
10. Purchase/ sale of Indian Depository Receipts (IDRs) issued by companies resident outside India and issued in Indian Capital Market (Schedule 10)
11. Acquisition through rights issue or bonus issue
12. Issue of Employees' Stock Options Scheme (ESOP) and Sweat Equity Shares to persons resident outside India
13. Issue of Convertible Notes by an Indian startup company

14. Merger or demerger or amalgamation of Indian companies

Transfer of capital instruments of an Indian company by or to a person resident outside India

- Transfer from a person resident outside India not being a non resident Indian or an overseas citizen of India by way of sale or gift to any person resident outside India
- Transfer by an overseas corporate body (OCB) ['Overseas Corporate Body (OCB)' means an entity derecognized through Foreign Exchange Management [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003]
- Transfer by an NRI/ OCI by way of gift or sale to any person resident outside India
- Transfer by a NRI/ OCI holding capital instruments on a non-repatriable basis or a person resident in India by way of sale to any person resident outside India
- Transfer by an NRI/ OCI holding capital instruments on a non-repatriable basis by way of gift to another NRI/ OCI who will hold such capital instruments on a non-repatriable basis
- Sale by a person resident outside India on a recognised stock exchange in India
- Transfer by way of gift by an NRI/ OCI holding securities on a non-repatriable basis or a resident to a person resident outside India
- Transfer by a person resident outside India of capital instruments containing an optionality clause
- Deferred payment consideration
- Opening of Escrow account
- Transfer by way of pledge
- Transfer from a resident to a person resident outside India where the investee company is in the financial sector

Investment through a rights issue or a bonus issue

A person resident outside India having investment in an Indian company is permitted to invest in the capital instruments (other than share warrants) issued by such company as a rights issue or a bonus issue subject to the following conditions:

1. The offer made by the Indian company is in compliance with the provisions of the Companies Act, 2013;
2. The issue does not result in a breach of the sectoral cap applicable to the company;
3. The shareholding on the basis of which the rights issue or the bonus issue has been made must have been acquired and held as per the provisions of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 Notification No. FEMA 20(R)/2017-RB (Amended up to April 06, 2018)
4. In case of a listed Indian company, the rights issued to persons resident outside India shall be at a price determined by the company;

FOREIGN DIRECT INVESTMENT

4. In case of an unlisted Indian company, the rights issued to persons resident outside India should not be at a price less than the price offered to persons resident in India;
5. Such investment made through rights issue or bonus issue is subject to the conditions as are applicable at the time of such issue;
6. The amount of consideration may be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016;

Where the original investment has been made on a non-repatriation basis, the amount of consideration may also be paid by debit to the NRO account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Issue of Employees' Stock Options Scheme (ESOP) and Sweat Equity Shares

An Indian company is permitted to issue "employees' stock option" and/ or "sweat equity shares" to its employees/ directors or employees/ directors of its holding company or joint venture or wholly owned overseas subsidiary/ subsidiaries who are resident outside India, subject to the following conditions:

1. The ESOP is drawn either in terms of regulations issued under the Securities and Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013;
2. The "employee's stock option"/ "sweat equity shares" are in compliance with the sectoral cap applicable to the said company;
3. Issue of "employee's stock option"/ "sweat equity shares" in a company where investment by a person resident outside India is under the approval route requires prior Government approval;
4. Issue of "employee's stock option"/ "sweat equity shares" to a citizen of Bangladesh/ Pakistan requires prior Government approval.
5. Issue of "sweat equity shares" to a person resident outside India was permitted with effect from June 11, 2015

Issue of Convertible Notes by an Indian startup company

A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered/ incorporated in Pakistan or Bangladesh), is permitted to purchase convertible notes issued by an Indian startup company for an amount of twenty five lakh rupees or more in a single tranche.

A startup company, engaged in a sector where investment by a person resident outside India requires Government approval, may issue convertible notes to a person resident outside India only with such approval. Further, issue of equity shares against such convertible notes should be in compliance with the entry route, sectoral caps, pricing guidelines and other attendant conditions for foreign investment.

The payment consideration can be received by inward remittance through banking channels or by debit to the NRE/ FCNR (B)/ Escrow account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. The Escrow account shall remain operational for a

GUIDANCE NOTE ON SECRETARIAL AUDIT

maximum period of six months only and the account shall be closed immediately after completing the requirements or on completion of six months from the date of opening of such account, whichever is earlier. In case the Escrow account is required to be maintained beyond six months, specific permission from the Reserve Bank has to be sought.

An NRI or an OCI may acquire convertible notes on a non-repatriation basis in accordance with Schedule 4 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 Notification No. FEMA 20(R)/2017-RB (Amended up to April 06, 2018)

A person resident outside India may acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and pricing guidelines as prescribed for capital instruments..

Convertible notes as an investment option was permitted for startup companies with effect from January 10, 2017.

Merger or demerger or amalgamation of Indian companies

In case a Scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company has been approved by the National Company Law Tribunal (NCLT)/ Competent Authority, the transferee company or the new company, as the case may be, may issue capital instruments to the existing holders of the transferor company who are resident outside India, subject to the following conditions:

1. The transfer or issue should comply with entry routes, sectoral caps or investment limits, as the case may be, and the attendant conditionalities of foreign investment.
2. In case the foreign investment is likely to breach the Sectoral caps or the attendant conditionality, the transferor company or the transferee or the new company should obtain necessary Central Government approval.
3. The transferor company or the transferee company or the new company should not be in a sector prohibited for foreign investment.

In case a Scheme of Arrangement for an Indian company has been approved by National Company Law Tribunal (NCLT)/ Competent Authority, the Indian company may, with effect from December 31, 2013, issue non-convertible redeemable preference shares or non-convertible redeemable debentures to shareholders who are resident outside India, including depositories that act as trustees for the ADR/ GDR holders, out of its general reserves by way of distribution as bonus, subject to the following conditions:

1. The original investment made in the Indian company by a person resident outside India is in accordance with FEMA 20(R) and the conditions specified therein;
2. The said issue is in accordance with the provisions of the Companies Act, 2013 and the terms and conditions, if any, stipulated in the scheme approved by National Company Law Tribunal (NCLT)/ Competent Authority;
3. The Indian company is not engaged in any activity/ sector in which foreign investment is prohibited.

FOREIGN DIRECT INVESTMENT

Checklist on Foreign Direct Investment under Automatic Route:

S. No.	Particulars	Remarks
1.	Check the eligibility of the person investing in FDI.	
2.	Check whether the total FDI is within the sectoral cap and not under prohibited sectors.	
3.	Check whether the company has complied with pricing guidelines for FDI while issuing fresh shares to persons resident outside India.	
4.	Check whether consideration received for FDI is as per the permitted modes of payment.	
5.	Ensure that any rights/bonus issue has not resulted in FDI exceeding sectoral cap.	
6.	Check whether the Company has issued shares under ESOP scheme to persons resident outside India. Check whether the shares are allotted to citizens of Bangladesh with prior approval. Ensure that no shares are allotted to Citizens of Pakistan.	
7.	Check whether the Company has converted ECBs into equity shares? If so whether the conditions stipulated are fulfilled. (Whether partial conversion or full conversion)	
8.	Check whether the Company issued equity shares against import of capital goods/machinery, equipment etc. If so whether conditions stipulated in this regard is complied	
9.	Check whether the company has complied with issue of shares if any against pre-operative/pre-incorporation expenses.	
10.	Check whether the company has issued shares under ADR/ GDR. If so whether conditions stipulated are fulfilled.	
11.	Check whether the FDI does not exceed sectoral cap as a result of issue of shares under the scheme of merger.	
12.	Check whether the guidelines are followed while calculating total foreign investment.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
13.	Check whether there is any change in FDI due to transfer of shares from Resident to non resident or non resident to resident.	
14.	Check whether the company has informed about the inflow of funds within 30 days from the date of receipt.	
15.	Check whether the equity instruments are issued within 180 days of receipt of funds.	
16.	Check whether the company issuing shares under automatic route has reported the issue of shares (including shares issued under ESOP) in form FC-GPR within 30 days from the date of issue of shares. Also check whether a certificate from PCS is attached for compliance	
17.	Check whether the reporting for FDI for transfer of shares is made in Form FC-TRS. Check if other guidelines regarding transfer of shares, namely, valuation guidelines, sectoral caps are being complied with. Check if Form FCTRS has been filed within 60 days of remittance	
18.	Check whether the reporting of conversion of ECB into equity in form ECB-2 along with FC-GPR.	
19.	Check whether the company has reported the issue of ADR/ GDR in prescribed form.	
20.	Check whether the issue/ transfer of sponsored/ unsponsored depository receipts as per DR Scheme 2014 in Form DRR within 30 days of close of the issue/ program has been made.	
21.	Check if the Company has received Unique Identification Number for each inward remittance received.	
22.	Check if the Company has received Foreign Direct Investment (FDI) Registration Number against form FCGPR filed.	
23.	Check, that shares issued to FII's under FDI scheme and portfolio investment scheme and the amount received from them are reported separately (Post-issue pattern of shareholding) so that the details could be suitably reconciled for statistical / monitoring purposes.	
24.	Check whether the approval of the Government is conveyed for investment by swap of shares which is a prerequisite. (it may be	

FOREIGN DIRECT INVESTMENT

S. No.	Particulars	Remarks
	noted that in cases of investment by way of swap of shares, irrespective of the amount, valuation of the shares will have to be made by a Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country.)	
25.	Check if Annual Return on Foreign Liabilities & Assets is filed every year on or before 15th July. The return is to be filed even if in a particular year, there is no fresh inflow or out flow of funds.	

Checklist for Foreign Direct Investment under Approval Route

S.No.	Particulars	Remarks
1	Check whether prior approval of Foreign Investment Promotion Board is obtained for FDI which are in excess of sectoral cap.	
2	Check whether the shares issued to person who is a citizen of Bangladesh or an entity incorporated in Bangladesh/ Pakistan under the FDI Scheme is with the prior approval of the Government and is subject to the prohibitions applicable, with respect to citizens of Pakistan or entity incorporated in Pakistan.	
3	Check whether the conversion of import payables/ pre incorporation expenses/ share swap is treated as consideration for issue of shares with the approval of Government. (Please note that earlier in place of government it was FIPB, which has been abolished F.No. 01/01/FC12017 –FIPB Dated the 5th June, 2017. Subsequent to the abolition of the FIPB, the work of granting government approval for foreign investment under the extant FDI Policy and FEMA Regulations, shall be entrusted to the concerned Administrative Ministries/Departments. There are eleven notified sectors/activities requiring government approval with the concerned Administrative Ministry/ Department)	
4	Check whether the FDI in an on SME has exceeded 24% of paid up capital or sectoral cap whichever is lower, if such non SME has industrial licence for products reserved for SMEs? If so whether prior approval of Government was obtained?	
5	Check whether there is any transfer of shares from resident to non resident which requires Government approval.	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S.No.	Particulars	Remarks
6	Check whether the Issue of shares to a non-resident against shares swap i.e. ,in lieu for the consideration which has been paid for shares acquired in the overseas company, can be done with the approval of Government.	
7	Check whether the company has complied with reporting requirements for issue of shares under approval route. (Reporting requirements same as automatic route.) Also check other points from Automatic Route checklist which may be applicable, i.e., Filing of Annual Return on Foreign Liabilities & Assets, etc.	

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Issue of equity shares under Approval Route

An Indian company may issue capital instruments to a person resident outside India under automatic route if the Indian investee company is engaged in a sector under automatic route or with prior Government approval if the Indian investee company is engaged in a sector under Government route against:

(a) Swap of capital instruments;

(b) Import of capital goods/ machinery/ equipment (excluding second-hand machinery) subject to the following conditions:

- (i) The import of capital goods, machineries, etc., made by a person resident in India, is in accordance with the Foreign Trade Policy notified by the Directorate General of Foreign Trade (DGFT) and the regulations on imports issued under the Act;
- (ii) There is an independent valuation of the capital goods/ machineries/ equipment by a third party entity, preferably an independent valuer from the country of import along with production of copies of documents/ certificates issued by the customs authorities towards assessment of the fair-value of such imports;
- (iii) In case of applications submitted for Government approval:

Applications (complete in all respects) for capitalization should be submitted within 180 days from the date of shipment of goods.

(c) Pre-operative/ pre-incorporation expenses (including payments of rent etc.), subject to the following conditions:

- (i) Verification and certification of the pre-incorporation/ pre-operative expenses by the statutory auditor;

FOREIGN DIRECT INVESTMENT

- (ii) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred;
- (iii) Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under the Act or the rules or the regulations framed thereunder; and
- (iv) In case of applications submitted for Government approval, The application (complete in all respects) for capitalization being made within a period of 180 days from the date of incorporation of the company.

Cases which do not require Fresh Approval of FIPB (Please note FIPB has been abolished F.No. 01/01/FC12017 –FIPB Dated the 5th June,2017 Subsequent to the abolition of the FIPB, the work of granting government approval for foreign investment under the extant FDI Policy and FEMA Regulations, shall be entrusted to the concerned Administrative Ministries/Departments. There are eleven notified sectors/activities requiring government approval with the concerned Administrative Ministry/ Department)

Companies may not require fresh prior approval of the Government for bringing in additional foreign investment into the same entity, in the following cases:

- (i) Entities the activities of which had earlier required prior approval of Government and which had, accordingly, earlier obtained prior approval of Government for their initial foreign investment but subsequently such activities/sectors have been placed under automatic route;
- (ii) Entities, the activities of which had sectoral caps earlier and which had, accordingly, earlier obtained prior approval of Government for their initial foreign investment but subsequently such caps were removed/increased and the activities placed under the automatic route; provided that such additional investment along with the initial/original investment does not exceed the sectoral caps;
- (iii) Additional foreign investment into the same entity where prior approval of Government had been obtained earlier for the initial/original foreign investment due to requirements of Press Note 18/1998 or Press Note 1 of 2005 and prior approval of the Government under the FDI policy is not required for any other reason/purpose; and
- (iv) Additional foreign investment up to cumulative amount of Rs 5000 crore into the same entity within an approved foreign equity percentage/or into a wholly owned subsidiary.

Establishment of Branch Office (BO)/Liaison Office (LO)/Project Office (PO) in India by foreign entities - procedural guidelines

The provisions relating to establishment of Branch Office/ Liaison Office/ Project Office in India by foreign entities is contained in the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 dated March 31,2016.

Members are also advised to refer to the salient features contained in A.P. (DIR Series) Circular No.69 [(1)/22(R)] May 12, 2016.

GUIDANCE NOTE ON SECRETARIAL AUDIT

Checklist for establishment of branch/liaison/project office in India

S.No.	Particulars	Remark
1.	Check whether the establishment of branch/liaison/project office results in Automatic route or Government Route? (it may be noted that where principal business of the foreign entity falls under sectors where 100% FDI is permissible under automatic route, then it is through RBI route, otherwise it is through approval route.)	
2.	In case the Non Resident entity is having place of business in India (Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO). Check if the Company has filed application in Form FNC (along with Letter of Comfort, where applicable) and Obtained the approval of the designated AD Category I Bank.	
3.	Check if the Office is established within a period of six months from date of approval or such other period (not exceeding 6 months) as may be approved by the designated AD Category I Bank and intimation of such establishment is given to designated AD Category I Bank	
4.	Check if Report has been filed with DGP within 7 days of establishment of the office.	
5.	Check if Annual Activity Certificate (AAC) as at end of March 31 each year has been filed along with audited financial statements before September 30 with DGIT & designated AD Category-I bank. Also check if report to DGP is part of such Annual Activity Certificate. (Note: PO to submit to AAC only to designated AD Category -I bank; LO/BO to both)	
6.	In case of closure of LO/BO/PO and for remittance of winding up proceeds, whether request for closure has been filed with designated AD Category -I bank.	
7.	Whether the BO/LO has obtained Pan on setting up their office and reported the same in the AAC?	
8.	Check if Company is carrying any activity which would be deemed to be having a Place of Business in India as per provisions of Companies Act, 2013 and if compliance under both CA, 2013 & FEMA has been done.	

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FOREIGN DIRECT INVESTMENT

Relevant RBI Notification, Circulars to be referred:

- The Companies Act, 2013 and rules made thereunder
 - Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 as amended from time to time.
 - Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities - procedural guidelines
 - Consolidated FDI Policy Circular of 2017
 - It is advised to visit www.rbi.org for latest update on FEMA.
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5

DIRECT INVESTMENT BY RESIDENTS IN JOINT VENTURE/ WHOLLY OWNED SUBSIDIARY ABROAD

Overseas investments in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) have been recognized as important avenues for promoting global business by Indian entrepreneurs. Joint Ventures are perceived as a medium of economic and business co-operation between India and other countries. Transfer of technology and skill, sharing of results of R&D, access to wider global market, promotion of brand image, generation of employment and utilisation of raw materials available in India and in the host country are other significant benefits arising out of such overseas investments. They are also important drivers of foreign trade through increased exports of plant and machinery and goods and services from India and also a source of foreign exchange earnings by way of dividend earnings, royalty, technical know-how fee and other entitlements on such investments.

Section 6 of the Foreign Exchange Management Act, 1999 provides powers to the Reserve Bank to specify, in consultation with the Government of India the classes of permissible capital account transactions and limits up to which foreign exchange is admissible for such transactions. Section 6(3) of the aforesaid Act provides powers to the Reserve Bank to prohibit, restrict or regulate various transactions referred to in the sub-clauses of that sub-section, by making Regulations.

In exercise of the above powers conferred under the Act, the Reserve Bank has issued Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 vide Notification No. FEMA.120/RB-2004 dated July 7, 2004. The Notification seeks to regulate acquisition and transfer of a foreign security by a person resident in India i.e. investment (or financial commitment) by Indian entities in overseas joint ventures and wholly owned subsidiaries as also investment by a person resident in India in shares and securities issued outside India. Overseas Investment (or financial commitment) can be made under two routes viz. (i) Automatic Route and (ii) Approval Route

For all purposes "Direct investment outside India" means investment by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, but does not include portfolio investment.

"Financial Commitment" means the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary;

Method of Funding

1. Investment in an overseas JV/WOS may be funded out of one or more of the following sources:
 - (i) drawal of foreign exchange from an AD bank in India;

DIRECT INVESTMENT BY RESIDENTS IN JOINT VENTURE/ WHOLLY OWNED SUBSIDIARY ABROAD

- (ii) capitalisation of exports;
- (iii) swap of shares;
- (iv) proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs);
- (v) in exchange of ADRs/GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued thereunder from time to time by the Government of India;
- (vi) balances held in EEFC account of the Indian party and
- (vii) proceeds of foreign currency funds raised through ADR/GDR issues.

In respect of (vi) and (vii) above, the limit of financial commitment vis-à-vis the networth will not apply. However, all investments made in the financial sector will be subject to compliance with Regulation 7 of the Notification, irrespective of the method of funding.

Prohibitions

(a) Indian Parties are prohibited from making investment (or financial commitment) in foreign entity engaged in real estate (meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges) or banking business, without the prior approval of the Reserve Bank.

(b) An overseas entity, having direct or indirect equity participation by an Indian Party, shall not offer financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the Reserve Bank. Any incidence of such product facilitation would be treated as a contravention of the extant FEMA regulations and would consequently attract action under the relevant provisions of FEMA, 1999.

General Permission

General permission has been granted to persons resident in India for purchase/acquisition of securities in the following manner:

- (i) Out of funds held in RFC account;
- (ii) As bonus shares on existing holding of foreign currency shares; and
- (iii) When not permanently resident in India, out of their foreign currency resources outside India

General permission is also available to sell the shares so purchased/acquired.

Overseas Investment can be made under two routes viz. Automatic Route and Approval Route

DIRECT INVESTMENT BY RESIDENTS IN JOINT VENTURE/WHOLLY OWNED SUBSIDIARY

A Master Direction on Overseas Direct Investment was issued by RBI on January 01, 2016. The Master Direction:- *RBI/FED/2015-16/10 FED Master Direction No. 15/2015-16* including all updates as on January 04, 2018 is available at www.rbi.org.

GUIDANCE NOTE ON SECRETARIAL AUDIT

It is advised to refer latest Master Director Circular as issued by Reserve Bank of India from time to time.

Check list – Direct Investment outside India– Automatic Route

S. No.	Particulars	Remarks
1.	<p>Check whether the investment (total financial commitment (FC)) in overseas Joint Ventures/Wholly Owned Subsidiaries (WOS) does not exceed 400% of the net worth as on the date of last audited Balance Sheet of Indian Party. It is also to be ensured that prior approval of the Reserve Bank is obtained for any financial commitment exceeding USD1 (one) billion (or its equivalent) in a financial year, even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet). It may be noted that the total financial commitment of the Indian party in all the Joint Ventures/Wholly Owned Subsidiaries shall comprise of the following:</p> <ol style="list-style-type: none"> a. 100% of the amount of equity shares; b. 100% of the amount of compulsorily convertible preference shares (CCPS); c. 100% of the amount of other preference shares; d. 100% of the amount of loan; e. 100% of the amount of guarantee (other than performance guarantee) issued by the Indian party; f. 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian party provided the bank guarantee is backed by a counter guarantee / collateral by the Indian party; g. 50% of the amount of performance guarantee issued by the Indian party provided that if the outflow on account of invocation of performance guarantee results in the breach of the limit of the financial commitment in force, prior permission of the Reserve Bank is to be obtained before executing remittance beyond the limit prescribed for the financial commitment. 	
2.	<p>Check whether the Indian entity has extended loan or guarantee if any only to overseas JV/WOS in which it has equity participation? If not, whether the proposal for the same has been considered by the R.B.I. on approval basis?</p>	

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3.	<p>In case the Indian entities has offered any form of guarantee (corporate or personal (including the personal guarantee by the indirect resident individual promoters of the Indian Party)/ primary or collateral / guarantee by the promoter company / guarantee by group company, sister concern or associate company in India) check that</p> <p>i) All the financial commitments, including all forms of guarantees and creation of charge are within the overall ceiling prescribed for the Indian Party.</p> <p>ii) No guarantee is 'open ended' i.e. the amount and period of the guarantee should be specified upfront. In the case of performance guarantee, time specified for the completion of the contract shall be the validity period of the related performance guarantee.</p>	
4.	<p>Ensure that the Indian party is not in RBI's Exporters caution list/list of defaulters Circulated by R.B.I./Credit Information Bureau (India) Ltd. CIBIL/anyother credit information company as approved by the Reserve Bank or under investigation by any investigation / enforcement agency or regulatory body.</p>	
5.	<p>Ensure that all transactions relating to JV/WOS are routed through one branch of an authorised dealer bank, designated by Indian Party.</p>	
6.	<p>In case of partial/full acquisition of an existing foreign company, where investment is more than USD 5 million, the valuation of shares was made by SEBI registered Category I Merchant Banker/Investment Banker/Merchant Banker outside India registered with the appropriate regulatory authority in a host country; and in other cases by a Chartered accountant/Certified Public Accountant</p>	
7.	<p>In cases of investment by way of swap of shares ensure that the approval of the Government was taken. It is a prerequisite for investment by swap of shares</p>	
8.	<p>Ensure that shares acquired by Indian entity, in any in exchange of ADRs/ GDRs, issued to the Indian entity satisfy following conditions</p> <p>(i) ADRs/GDRs are listed on any stock exchange outside India;</p> <p>(ii) The ADR and/or GDR issued for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian Party;</p> <p>(iii) The total holding in the Indian entity by persons resident</p>	

GUIDANCE NOTE ON SECRETARIAL AUDIT

	<p>outside India in the expanded capital base, after the new ADR and/or GDR issue, does not exceed the sectoral cap prescribed under the relevant regulations for such investment under FDI;</p> <p>(iv) Valuation of the shares of the foreign company shall be</p> <ol style="list-style-type: none"> a. as per the recommendations of the Investment Banker if the shares are not listed on any recognized stock exchange; or b. based on the current market capitalisation of the foreign company arrived at on the basis of monthly average price on any stock exchange abroad for the three months preceding the month in which the acquisition is committed and over and above, the premium, if any, as recommended by the Investment Banker in its due diligence report in other cases. 	
9.	<p>Where Indian Party has issued corporate guarantees on behalf of its first level step down operating JV /WOS set up by its JV / WOS operating as either an operating unit or as a Special Purpose Vehicle (SPV) under the Automatic Route, ensure that the financial commitment of the Indian Party is within the extant limit.</p> <p><i>(Check form ODI for the purpose)</i></p>	
10.	<p>Check, in case where the investment/FC is in unincorporated/ incorporated entities overseas in oil sector under the Automatic Route/Construction and maintenance of submarine cable systems under the Automatic Route/Financial Services Sector, that all the conditions are satisfied.</p>	
11.	<p>Check in cases where listed Indian companies has made Portfolio investments in (i) shares and (ii) bonds / fixed income securities issued by listed overseas companies ensure that:</p> <ol style="list-style-type: none"> a. Investment is upto 50 per cent of the net worth of listed Indian company as on the date of the last audited balance sheet b. They are rated not below investment grade by accredited / registered credit rating agencies 	
12.	<p>Check in cases where Indian Mutual funds registered with SEBI has invested in equity of companies registered overseas / rated debt instruments, the investment is within the overall cap of USD 7 billion.</p> <p>Ensure the investment satisfies the following conditions:</p> <ol style="list-style-type: none"> i. ADRs/GDRs of the Indian and foreign companies; ii. Equity of overseas companies listed on recognized stock 	

DIRECT INVESTMENT BY RESIDENTS IN JOINT VENTURE/
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	<p>exchanges overseas;</p> <p>iii. initial and follow on public offerings for listing at recognized stock exchanges overseas;</p> <p>iv. foreign debt securities in the countries with fully convertible currencies, short-term as well as long-term debt instruments with rating not below investment grade by accredited/registered credit agencies;</p> <p>v. money market instruments rated not below investment grade;</p> <p>vi. Repos in the form of investment, where the counter party is rated not below investment grade. There repos should not, however, involve any borrowing of funds by mutual funds;</p> <p>vii. Government securities where the countries are rated not below investment grade;</p> <p>viii. derivatives trade don recognized stock exchanges overseas only for hedging and portfolio balancing with underlying as securities;</p> <p>ix. short-term deposits with banks overseas where the issuer is rated not below investment grade; and</p> <p>x. units/securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators and investing in (a) aforesaid securities, (b) Real Estate Investment Trusts (REITS) listed on recognized stock Exchanges overseas, or(c)unlisted overseas securities (not exceeding 10 percent of their net assets</p>	
13.	<p>Check in cases where Domestic Venture Capital Funds/Alternative Investment Funds, registered with SEBI, has invested in equity and equity linked instruments of off-shore Venture Capital Undertakings, the investment is within the overall limit of USD 500 million.</p>	
14.	<p>In case of restructuring of the balance sheet of the overseas entity involving write off of capital and receivables, the Indian promoters who have set up WOS abroad or have at least 51 per cent stake in an overseas JV, may write off capital (equity / preference shares) or other receivables, such as, loans, royalty, technical knowhow fees and management fees in respect of the JV /WOS, even while such JV /WOS continues to function, ensure that the listed Indian companies has written off capital and other receivables up to 25 per cent of the equity investment in the JV /WOS through automatic Route; and</p>	

GUIDANCE NOTE ON SECRETARIAL AUDIT

15.	Check in cases of Post investment changes / additional investment (or financial commitment) in existing JV / WOS ensure the reporting to Reserve Bank, the details of such decisions within 30 days of the approval of those decisions by the competent authority of the JV / WOS concerned in terms of local laws of the host country and include the same in the Annual Performance Report	
16.	Check whether the obligation of Indian party is fulfilled such as reporting of remittances, Annual Performance Report.	

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Check list-Direct Investment outside India – Approval Route

S. No.	Particulars	Remarks
1	Check whether prior approval of Reserve Bank of India is obtained in all cases which are not covered under the automatic route. <i>(Check form ODI submitted through Authorised Dealer Category-I banks.)</i>	
2.	Ensure that in case the issuance of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries where the Indian Party indirectly holds 51 per cent or more stake in the overseas subsidiary for which such guarantee is intended to be issued, the approval is obtained from Reserve Bank.	
3.	In case of Pledge of shares of Joint Venture (JV), Wholly Owned Subsidiary (WOS) and Step Down Subsidiary (SDS) ensure the compliance prescribed.	
4.	Check whether the reporting compliances are made with respect to purchase/re-purchase of shares under ESOP.	
5.	Indian Party is permitted to capitalise the payments due from the foreign entity towards exports, fees, royalties or any other dues from the foreign entity for supply of technical know-how, consultancy, managerial and other services within the ceilings applicable. Check and ensure that the Capitalisation of export proceeds remaining unrealised beyond the prescribed period of realization will require prior approval of the Reserve Bank.	
6.	Check in cases of Post investment changes / additional investment (or financial commitment) in existing JV / WOS ensure the reporting to Reserve Bank, the details of such decisions within 30 days of the approval of those decisions by the competent authority of the	

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	JV / WOS concerned in terms of local laws of the host country and include the same in the Annual Performance Report	
7.	Check whether the obligation of Indian party is fulfilled such as reporting of remittances, Annual Performance Report.	

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General Obligations of Indian Party:

1. To remit funds from one branch of the AD for the particular Overseas Direct Investment;
2. To file Form ODI within 30 days of remittance;
3. The Unique Identification Number allotted to each JV or WOS abroad, is required to be quoted in all correspondence with the Reserve Bank.;
4. Receive share certificates or any other document as an evidence of investment within 6 months from the date of remittance or such further date as the RBI may permit;
5. Each inward remittance to be supported by Foreign Inward Remittance Certificate to be issued by AD-Bank;
6. To furnish the aforesaid Share Certificate to AD-Bank;
7. Repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc. within 60 days of its falling due, or such further date as the RBI may permit;
8. Submit the APR on or before 30th June based on the latest audited financials of JV/ WOS;
9. Annual Return on Foreign Liabilities and Assets (FLA) needs to be filed on or before 15th July every year

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Note: ODI compliances by unincorporated entities have not been covered above.

Note: Relevant Act, Notification, Circulars-

1. The Companies Act, 2013 & Rules made thereunder
2. Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004
3. Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad. (RBI/FED/2015-16/10 FED Master Direction No. 15/2015-16 January 1, 2016 (Updated as on January 04, 2018).
4. It is advised to refer latest Master Director Circular as issued by Reserve Bank of India from time to time.

6

EXTERNAL COMMERCIAL BORROWING

External Commercial Borrowings (ECB)

ECBs are commercial loans raised by eligible resident entities from recognized non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters apply in totality and not on a standalone basis. The framework for raising loans through ECB comprises the following three tracks.

Track 1:

Medium term foreign currency denominated ECB with Minimum average maturity of 3/5 years.

Track 2:

Long term foreign currency denominated ECB with minimum average maturity of 10 years

Track 3:

Indian Rupees denominated ECB with minimum average maturity of 3/5 years.

Form of ECBs: The ECB Framework enables permitted resident entities to borrow from recognised non-resident entities in the following forms.

1. Loans including bank loans
2. Securitised instruments(floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares/debentures)
3. Buyers' credit
4. Suppliers' credit
5. Foreign Currency Convertible Bonds (FCCBs)
6. Financial Lease and
7. Foreign Currency Exchangeable Bonds (FCEBs)

However, ECB framework is not applicable in respect to the investment in non-convertible debentures in India by Registered Foreign Portfolio Investors.

ECB can be accessed under two routes, viz.,

- (i) Automatic Route and
- (ii) Approval Route.

Points for Verification:

1. Eligibility of the company and the Quantum of Loan

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2. Applicable route- Automatic/ Approval
3. Details of the recognized lender
4. Maximum Permissible Amount
5. Mature and Tenure of ECB
6. All in cost Celling
7. End use of ECB
8. Security for ECB
9. Loan Registration Number
10. Conversion of ECB in to Equity.

Checklist on External Commercial Borrowing

Automatic Route:

S. No.	Particulars	Remarks
1.	Check the eligibility of the borrower in terms of the three tracks is set out in the Regulations(Annexure I)	
2.	Check whether that the eligible borrower obtained Loan Registration Number from R.B.I. by submitting form 83 (certified by CS/CA) in duplicate to RBI through AD Category 1Bank.	
3.	<p>Check the individual limits of ECB that can be raised by eligible entities under the automatic route per financial year for all the three tracks as given below are complied with for automatic route</p> <ol style="list-style-type: none"> a. Up to USD 750 million or equivalent for the companies in infrastructure and manufacturing sectors, 19Non-Banking Financial Companies -Infrastructure Finance Companies (NBFC-IFCs), NBFCs-Asset Finance Companies (NBFC AFCs), Holding Companies and Core Investment Companies; b. Up to USD 200 million or equivalent for companies in software development sector; c. Up to USD 100 million or equivalent for entities engaged in micro finance activities; and d. Up to USD 500 million or equivalent for remaining entities. 	
4.	Check whether Designated AD Category I bank's approval was obtained in cases where there are any changes/modifications in the drawdown/repayment Schedule whether associated with change in the average maturity period or not and/ or with changes (increase/ decrease) in the all-in-cost.	
5	Check the Debt Equity Ratio of the borrowing entities as per the guidelines on debt equity ratio issued, if any, by the sectoral or	

EXTERNAL COMMERCIAL BORROWING

	prudential regulator concerned.	
6	Check whether the borrower has undertaken changes in the currency of borrowing of the ECB to any other freely convertible currency or to INR, if so, ensure that the entity complied with prescribed parameters and obtained Designated AD Category I bank's approval. Change of currency of INR denominated ECB is not permitted.	
7	Check whether the borrower company has undertaken changes in the name, if so ensure that the approval of Designated AD Category I banks was obtained in this regard.	
8	Check whether the borrower company has prepaid ECB, if so check whether the approval of designated AD Category I bank was obtained and other compliances relating to stipulated minimum average maturity were satisfied	
9	<p>A. Ensure that the ECB proceeds are not utilized for the following purposes:</p> <ul style="list-style-type: none"> i. Real estate activities other than development of integrated township / affordable housing projects; ii. Investing in capital market and using the proceeds for equity investment domestically; iii. Activities prohibited as per the foreign direct investment guidelines; iv. On-lending to other entities for any of the above purposes; and v. Purchase of Land <p>B. Also ensure that the</p>	
10.	Where there is change in end-use in respect of ECBs availed of under the automatic route ensure that the proposed end-use is permissible under the automatic route as per the extant ECB guidelines and the approval of designated AD Category I banks was obtained.	
11.	Check whether in case of refinancing of existing ECB, approval of : the designated AD Category I bank was obtained and other conditions were also satisfied with regard to the outstanding maturity of the original borrowing and all-in-cost of fresh ECB	
12.	Check whether in case of extension of matured but unpaid ECB, the approval of designated AD Category I bank was obtained and other conditions were also satisfied with regard to the consent of lender, no involvement of additional cost and fulfilment of reporting requirements	

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13.	Check if the ECB is raised under the erstwhile USD 5 million Scheme, if so ensure approval of designated AD Category I banks was obtained for elongation of repayment period for loans .	
14.	<p>Check where in cases ECB proceeds are parked abroad, the unutilized funds are invested only in the following liquid assets</p> <ol style="list-style-type: none"> a. deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody's; b. Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above and c. deposits with overseas branches/ subsidiaries of Indian banks abroad 	
15.	Ensure in cases where the ECB proceeds are parked domestically in term deposits with AD Category I banks in India for a maximum period of 12 months., these are kept in unencumbered position.	
16.	<p>Check whether the conversion of ECB including those which are matured but unpaid, into equity, is as per the guidelines.</p> <p>Ensure the timely reporting on account of conversion of ECB into equity- In case of partial or full conversion of ECB into equity, the reporting to the RBI will be as under:</p> <ol style="list-style-type: none"> i. For partial conversion, the converted portion is to be reported to the concerned Regional Office of the Foreign Exchange Department of RBI in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in ECB 2 Return will be with suitable remarks "ECB partially converted to equity". ii. For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of ECB 2 Return is not required. iii. For conversion of ECB into equity in phases, reporting through ECB 2 Return will also be in phases 	
17.	Check in cases where there is a change in ECB parameters, the same was reported to the Department of Statistics and Information Management (DSIM), Reserve Bank of India in revised Form 83 not later than 7 days from the changes effected.	
18.	Check whether the borrower timely reported the actual ECB transactions through ECB 2 Return through the AD Category I bank on monthly basis.	
19.	Check whether ECB exposure has been hedged 100% at all times and approval of risk management policy at board level has been	

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	obtained. Immovable property cannot be acquired by overseas lender/security trustee.	
20.	Check whether the company has complied with requirements relating to charge/pledging of shares etc.	

Checked By

Reviewed By

Dated.....

Dated.....

Application for Approval Route

For approval route cases, the borrowers may approach the RBI with an application in prescribed format Form ECB for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macro economic situation and merits of the specific proposals by an Empowered Committee set up by RBI. The Empowered Committee will have external as well as internal members. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form83.

ECBs for the following purposes will be considered only under the approval route:

- (a) Import of second hand goods as per the Director General of Foreign Trade (DGFT) guidelines;
- (b) On-lending by Exim Bank.
- (c) Proposals which are beyond the individual limits permitted under the Automatic route.

The framework of raising loans under the three different tracks is to be checked, to ensure whether the ECB is under Automatic Route or Approval Route.

Relevant Act, Regulations:

The Companies Act, 2013 and rules made thereunder

Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers

(RBI/FED/2015-16/15 FED Master Direction No.5/2015-16 January 1, 2016 (Updated as on May 09, 2018))

It is advised to visit www.rbi.org for latest updates.

7

SECRETARIAL STANDARDS

Introduction

The Institute of Company Secretaries of India (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

The SSB formulates Secretarial Standards taking into consideration the applicable laws, business environment and the prevalent best secretarial practices. Secretarial Standards are developed:

- in a transparent manner;
- after extensive deliberations, analysis, research; and
- after taking views of corporates, regulators and the public at large.

Besides eminent members of the ICSI, SSB comprises representatives of major Industry Associations viz., FICCI, CII, ASSOCHAM and PHD Chamber of Commerce & Industry, representatives of regulatory authorities, such as the Ministry of Corporate Affairs, Securities & Exchange Board of India, Insolvency and Bankruptcy Board of India, Reserve Bank of India, Bombay Stock Exchange, National Stock Exchange of India Ltd. and representatives of other professional bodies viz. the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India.

Applicability and Scope of Secretarial Standards

Section 118(10) of the Companies Act, 2013 requires every company to observe the Secretarial Standards with respect to Board and General Meetings specified by the Institute of Company Secretaries of India (ICSI) and approved as such by the Central Government.

Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) issued by the Institute of Company Secretaries of India (ICSI) are applicable to all companies w.e.f. 1st July, 2015 (except One Person Company where there is one director and class or classes of companies which are exempted through any notification of the Central Government).

Since then the SS-1 and SS-2 have been revised by the ICSI and approved by the Central Government under Section 118(10) of the Companies Act, 2013, which are applicable w.e.f. 1st October, 2017.

The revised version of SS-1 and SS-2 applies to Board and General Meetings respectively, in respect of which Notices are issued on or after 1st October, 2017.

Secretarial Standards are in conformity with the provisions of the applicable laws. However, if, due

GUIDANCE NOTE ON SECRETARIAL AUDIT

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

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed thereunder but, in fact, seek to supplement such laws, rules and regulations.

Need and benefits of Secretarial Standards

Companies follow diverse secretarial practices evolved over a period of time through varied usages and as a response to differing business cultures. Therefore, a need was felt to integrate, consolidate, harmonise and standardise all the prevalent diverse secretarial practices, so as to ensure that uniform practices are followed by the companies throughout the country.

By following the Secretarial Standards in true letter and spirit, companies will be able to ensure adoption of uniform, consistent and best secretarial practices. Such uniformity of best practices, consistently applied, will result in furthering the shareholders democracy by laying down principles for better corporate disclosures thus adding value to the general endeavor to strive for good corporate governance.

The Secretarial Standards have been introduced under the legal umbrella of Companies Act, 2013 which is first of its kind in the world. It is a great recognition to the profession of Company Secretaries and the ICSI, as the Company Secretaries in employment as well as in practice are entrusted to ensure the compliance of the applicable Secretarial Standards.

While the basic principles for Board and General Meetings are articulated under the Companies Act, 2013, the Secretarial Standards act as extended tone of those principles by giving clarity and standardising the diverse practices. Secretarial Standards plays indispensable role in enhancing the corporate culture and governance across the organisations.

In the Secretarial Standards, standard practices are articulated and comprehensively available at one place, adherence to same by the corporates is greatly eased, the stakeholders are clear of what they should expect and what their rights are. The Secretarial Standards facilitates ease of doing business, improved governance, confidence building in minds of investors, improved compliance level, ultimately leading to flow of capital in India and achieving the government's objective of make in India.

Incidentally, many a litigations are on account of non-following of proper procedures and non-availability of proper records, improper maintenance/ manipulation and tampering of Minutes, agenda papers, etc. The Standards addresses all these issues.

Compliance Checklist

Since, the Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standards on General Meetings (SS-2) are mandatory as prescribed under Section 118(10) of the Companies Act, 2013, it is necessary to ensure the effective compliance of Secretarial Standards by the members of the profession and accordingly, the respective checklist on SS-1 and SS-2 has been placed here for the reference.

SECRETARIAL STANDARDS

Checklist for Secretarial Standard on Meetings of the Board of Directors (SS-1)

S. No.	Particulars	Compliance	Remarks
Convening a Meeting			
1.	The Meeting has been convened by the authorised person in accordance with the Standards.		
2.	Notice of the Meeting (original/adjourned) was given in writing to all directors at least 7 days before the Meeting through one of the stipulated modes in accordance with the Standards or within such longer period as provided in the Articles of the Company.		
3.	The notice specified the serial number, day, date, time and full address of the venue of the Meeting.		
4.	The notice contains all necessary information to enable the Directors to avail the facility of participation through Electronic Mode.		
5.	Agenda and Notes on Agenda for the Meeting was given to all directors at least 7 days before the Meeting through one of the stipulated modes in accordance with the Standards or within such longer period as provided in the Articles of the Company.		
6.	In case of a Meeting called at shorter notice/sending agenda in respect of Unpublished Price Sensitive information at shorter notice, whether due procedure as per the Standards was followed.		
7.	The proof of sending Notices, Agenda and Notes thereon and their delivery have been retained in accordance with the Standards.		
8.	Any other item not included in the Agenda was taken up for consideration and approved in accordance with the Standards.		
Frequency of the Meeting			

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S. No.	Particulars	Compliance	Remarks
9	In case of a newly incorporated company, the 1st Meeting of the Board was held within 30 days of incorporation.		
10.	The specified numbers of Meetings were held in a year (calendar year) and the gaps between two consecutive Meetings did not exceed the specified period.		
11.	Meetings of the Committees were held as prescribed by any law or authority or as stipulated by the Board.		
12.	Meeting of the Independent Directors was held in accordance with the Standards.		
Quorum			
13.	The requisite quorum of dis-interested directors was present throughout the Meeting of the Board/Committees and no business was transacted when the required quorum in accordance with the Standards was not present.		
14.	The directors participated through electronic mode in a Meeting were counted for the quorum except in case of restricted items of business as specified under the law.		
15.	The Board was properly constituted at the time of Meeting and no business was transacted if the number of directors reduced below the quorum fixed by the Articles /Act, except those permissible under the Act.		
Attendance at the Meetings			
16.	The Attendance Register for the Board and Committee Meetings were duly maintained in accordance with the Standards and kept in the custody of the Company Secretary or any other person authorised by the Board.		
17.	The attendance registers are preserved for a		

SECRETARIAL STANDARDS

S. No.	Particulars	Compliance	Remarks
	period of at least eight financial years from the date of last entry made therein and destruction thereof, if any, during the year was made with the approval of the Board.		
18.	Leave of absence was granted to a director in accordance with the Standards, if requested for.		
Chairman			
19.	The Chairman of the Company or any other director duly elected as Chairman of the Board, conducted the Meetings of the Board in accordance with the Standards.		
20.	In case of committees, the Chairman of the committee as appointed by the Board or duly elected by the committee members, conducted the Meetings of the Committee in accordance with the Standards.		
Passing of Resolutions by Circulation			
Authority			
21.	The decision/approval of competent authority is obtained before a particular business by means of a resolution by circulation had been circulated in accordance with the Standards.		
22.	The items required to be transacted only at a Meeting of the Board had not been passed by way of resolution by circulation.		
23.	Where requisite number of directors requested the matter to be taken up at a Board Meeting, the matter was placed for consideration at a Meeting of the Board.		
Procedure			
24.	The draft of the resolution proposed to be passed by circulation alongwith necessary papers including explanatory note had been circulated to all the directors of the company through the specified modes of delivery.		

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S. No.	Particulars	Compliance	Remarks
25.	The explanatory note indicated the last date by which the directors had to respond with their assent/dissent and manner thereof.		
Approval			
26.	The resolution, if approved by the requisite majority had been taken on record in accordance with the Standards.		
Recording			
27.	The resolutions passed by circulation had been noted at the next Board Meeting and the text thereof with dissent or abstention, if any, were recorded in the minutes of such Meeting including the fact that the Interested Director, if any did not vote on the resolution.		
Minutes			
28.	The Minutes of the Board/Committee Meetings were signed by the Chairperson of that Meeting or the next Meeting.		
Maintenance			
29.	Check whether: <ul style="list-style-type: none"> i. Minutes are recorded in the books maintained for that purpose. ii. Distinct Minutes book are maintained in respect of Board and Committee Meeting. iii. Minutes maintained in electronic form, if any, with Timestamp. iv. The pages of the Minutes book are consecutively numbered. 		
30.	Minutes are not pasted or attached to Minutes Book, altered or tempered with in any manner.		
31.	Minutes if maintained in loose-leaf form are bound periodically in accordance with the Standards.		

SECRETARIAL STANDARDS

S. No.	Particulars	Compliance	Remarks
32.	The Minutes Books are kept at the Registered Office of the company or at a place approved by the Board.		
Contents			
33.	<p>Check whether:</p> <p>i. Minutes stated the number and type of the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.</p> <p>ii. Minutes record the names of the directors present physically or through electronic mode, the Company Secretary in attendance at the Meeting and invitees, if any.</p> <p>iii. Minutes contain a record of all appointments made at the Meeting</p> <p>iv. Minutes includes other specific contents in accordance with the Standards.</p>		
34.	Minutes mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof was also mentioned.		
35.	Minutes recorded the fact that a resolution was passed pursuant to the casting vote (if any) of Chairman of the Meeting.		
Recording			
36.	Unsigned documents tabled or presented at the Meeting, which were not part of the Notes on Agenda and referred to in the minutes were suitably identified by initialing in accordance with the Standards.		
37.	Where a decision is superseded or modified subsequently by the Board, the Minutes contains a specific reference to such earlier resolution/decision or state that the Resolution is in supersession of all earlier Resolutions passed in		

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Compliance	Remarks
	that regard.		
38.	Minutes of the preceding Meeting were noted at the next Meeting of the Board held immediately following the date of entry of such minutes in the Minutes Book.		
Finalisation and Entry in Minutes Books			
39.	The draft minutes were circulated to all directors/ Committee members within 15 days from the date of conclusion of the Meeting in accordance with the Standards.		
40.	The Minutes were finalised and entered in the Minutes Books within 30 days from the date of conclusion of the original/adjourned Meeting.		
41.	Alteration in the Minutes, if any, was made with the express approval of the Board at its subsequent Meeting at which the minutes are noted by the Board and the fact of such alteration was recorded in the Minutes of such subsequent Meeting.		
Signing and dating			
42.	Minutes are initialled, dated and signed by the Chairman in accordance with the Standards.		
43.	Within fifteen days of signing of the Minutes, a certified copy thereof was circulated to the directors in accordance with the Standards		
Inspection & Extracts			
44.	The inspection of Minutes was allowed and Extracts thereof were provided in accordance with the Standards.		
Preservation of Minutes			
45.	Minutes of all Meetings are preserved permanently in physical/electronic form and kept in the custody of Company Secretary/ any director duly		

SECRETARIAL STANDARDS

S. No.	Particulars	Compliance	Remarks
	authorised for the purpose by the Board.		
46.	Office copies of Notices, Agenda, Notes on Agenda and other related papers are preserved in good order in physical or electronic form in accordance with the Standards.		
47.	Minutes of all Meetings of the transferor company as handed over to the transferee company, if any, are duly preserved permanently.		
48.	Office copies of Notices, Agenda, Notes on Agenda and other related papers of the transferor company, as handed over to the transferee company, if any, are duly preserved in accordance with the Standards.		
49..	The requisite approval of the Board/Central Government is obtained, wherever necessary to destroy any document in accordance with the Standards.		
50.	The Report of the Board of Directors included a statement on compliances of applicable Secretarial Standards.		

Checklist for Secretarial Standard on General Meetings (SS-2)

S. No.	Particulars	Compliance	Remarks
1.	The General Meetings during the year has been convened by or under the authority of the Board in accordance with the Standards.		
2.	Annual General Meeting and the requisitioned Meeting, if any, called by the Board of Directors/requisitionists convened between 9 am to 6 pm on a day other than National Holiday in accordance with the Standards.		
3.	The Notice alongwith accompanying documents were given in writing to all Members, Directors, Auditors, Secretarial Auditors, Debenture Trustees and to other persons entitled to receive notice		

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S. No.	Particulars	Compliance	Remarks
	through one of the specified modes at least 21 clear days in advance of the Meeting.		
4.	Proof of sending of the notice and accompanying document is retained by the company in accordance with the Standards.		
5.	The notice clearly specified the day, date, time and full address of the venue of the Meeting including the route map and prominent land mark wherever required besides clearly specifying the nature of the Meeting and the business to be transacted thereat. In case of AGM, the serial number of the Meeting was stated in Notice.		
6.	The Notice was also hosted on the website of the company, if any.		
7.	The Notice was accompanied by attendance slip and a Proxy form with clear instructions for filling, stamping, signing and/or depositing the Proxy form.		
8.	The notice provided all necessary information to enable the Members to access facility of e-voting in accordance with the Standards.		
9.	In all cases relating to the appointment or re-appointment and/or fixation of remuneration of directors the details in accordance with the Standards has been provided in the explanatory statement.		
10.	The nature of the concern or interest (financial or otherwise), if any, of the prescribed persons, in any item of business or in a proposed Resolution, was disclosed in the explanatory statement.		
11.	In case of Meetings held at shorter notice due procedure as per the Standard was followed.		
12.	No items of business other than those specified in the Notice and those specifically permitted under law were taken up for consideration at the Meeting.		

SECRETARIAL STANDARDS

S. No.	Particulars	Compliance	Remarks
13.	A Meeting convened upon due Notice had not been postponed or cancelled, except for reasons beyond the control of the Board. In such case, check whether it had been duly reconvened.		
14.	No business was transacted at a Meeting, if the Notice was not given in accordance with the Standards.		
Frequency of the Meeting			
15.	The Annual General Meeting was held during the year in accordance with the requirement of the Act and the Standards.		
16.	Extra-Ordinary General Meeting or a postal ballot, if any, transacted the items of business other than ordinary business and those of an urgent nature.		
Quorum			
17.	The requisite quorum was present throughout the Meeting in accordance with the Standards.		
Presence of Directors and Auditors			
18.	All the directors of the company had attended the General Meetings of the company. If any director was unable to attend the Meeting, the reasons thereof were explained by the Chairman at the Meeting.		
19.	The Auditors, unless exempted by the company, attended the General Meetings of the company either by themselves or through their authorised representative.		
20.	The Secretarial Auditor, unless exempted by the company, attended the Annual General Meeting, either by himself or through his authorised representative.		
Chairman			

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Compliance	Remarks
21.	Meetings was conducted either by Chairman of the Board or any other director so designated or any other elected Chairman in accordance with the Articles of Company or the Standards, as the case may be.		
22.	The objective and implications of the Resolutions were explained by the Chairman before the same were put to vote at the Meeting.		
23.	In case of a public company, the Chairman entrusted the conduct of the proceedings in respect of an item in which he was concerned or interested to any Non-Interested Director/Member and resumed the Chair after that item of business has been transacted at the Meeting.		
Proxies			
24.	Requirements of the Standards relating to Notice of Right to Appoint Proxies, Form of Proxy, Stamping of Proxies, Execution of Proxies, Proxies in Blank and Incomplete Proxies, Deposit, Revocation, Inspection and Record of Proxies have been duly complied with.		
Voting			
25.	Every Resolution, except a Resolution which has been put to vote through Remote e-Voting or on which a poll has been demanded, was duly proposed by a member and seconded by another member.		
26.	In case of a company having its equity shares listed (other than the exempted companies) the e-voting facility was provided to its members to exercise their voting rights and also every Resolution was put to vote through a ballot process at the Meeting.		
27.	Every Resolution except those placed for voting through remote e-voting, in the first instance was put to vote on a show of hands, unless a poll was		

SECRETARIAL STANDARDS

S. No.	Particulars	Compliance	Remarks
	validly demanded.		
28.	Voting at the Meeting was in accordance with the law and the Standards.		
Conduct of Voting by Electronic Means			
29.	Company provided e-voting facility to its Members in compliance with applicable provisions.		
30.	The Board appointed an agency to provide electronic platform for e-voting.		
31.	The Board appointed scrutinizer(s), who was not an officer or employee of the company for the e-voting/ballot process.		
32.	The Report of the Scrutinizer was submitted to the Chairman or any other person authorised by the Chairman for this purpose.		
33.	The requirements of Standards w.r.t. conduct of e-voting, declaration /publishing of results, custody of Scrutinizer's Report & related papers had been duly complied with.		
Conduct of Poll			
34.	The demand/conduct of poll, if any, at the Meeting was in accordance with the law and the Standards.		
35.	In case of a poll not taken forthwith, the Chairperson had announced the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to exercise their vote.		
36.	Each Resolution put to vote by poll was put to vote separately.		
37.	The Chairperson appointed such number of scrutinizers, as necessary in accordance with the Standard to ensure scrutiny of votes cast on a poll in a fair and transparent manner.		
38.	The requirements of Standards w.r.t. declaration / publishing of results had been duly complied with.		

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S. No.	Particulars	Compliance	Remarks
Withdrawal of Resolutions			
39.	No Resolution was withdrawn w.r.t. items of business likely to affect market price of the securities of the company or proposed for consideration through e-voting.		
Rescinding of Resolutions			
40.	No Resolution passed at a Meeting has been rescinded otherwise than by a Resolution passed at a subsequent Meeting.		
Modification to Resolutions			
41.	No material modification to text of the Resolution, as set out in the notice, was made at the Meeting which alters the substance of the Resolution.		
42.	No modification was made to any Resolution which has already been put to vote by Remote e-voting before the Meeting.		
Reading of Reports			
43.	The qualifications, observations or comments on the financial statements or matters which have any adverse/material adverse effect on the functioning of the company, if any, mentioned in the Auditor's Report / Secretarial Audit Report were read at the Annual General Meeting alongwith explanations / comments given by the Board of Directors in their report to such qualifications/observation and comments of the Auditors/Secretarial Auditors.		
44.	No gifts, gift coupons or cash in lieu of gifts was distributed to any member at or in connection with the Meeting.		
Adjournment of Meeting			
45.	The adjournment of Meeting was in accordance with the Standards.		

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S. No.	Particulars	Compliance	Remarks
46.	Notice of the adjourned Meeting was given in accordance with the Standards.		
47.	Quorum requirements were fulfilled in adjourned Meeting.		
48.	Only the unfinished business of the original Meeting was taken up at an adjourned Meeting.		
Passing of Resolution by Postal Ballot			
49.	Passing of Resolution by Postal Ballot, if any, was in accordance with the Standard.		
50.	The Board appointed scrutinizer and appointed an agency for the remote e-voting in case of postal ballot.		
51.	The Report of the Scrutinizer was submitted to the Chairman/any other person authorised by the Chairman for this purpose.		
52.	The requirements of Standards w.r.t. Notice of Postal Ballot, Declaration/publishing of results, custody of Scrutinizer's Report & related papers, rescinding/modification of resolutions had been duly complied with.		
Minutes			
53.	Minutes of the General Meetings were entered in the minutes book and signed within 30 days of conclusion of the Meeting. The date of entry of minutes in the books was recorded by the Company Secretary/any other person authorised for this purpose in accordance with the Standards.		
54.	Check whether: <ul style="list-style-type: none"> • Minutes are recorded in books maintained for that purpose. • Distinct Minutes book are maintained in respect of Meeting of Members, Creditors etc. 		

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S. No.	Particulars	Compliance	Remarks
	<ul style="list-style-type: none"> • Minutes maintained in electronic form, if any, with Timestamp. • The pages of the Minutes book are consecutively numbered. 		
55.	Minutes are not pasted or attached to Minutes Book, altered or tempered with in any manner.		
56.	Minutes if maintained in loose-leaf form are bound periodically in accordance with the Standards.		
57.	The Minutes Books are kept at the Registered Office of the company.		
Contents and recording of Minutes			
58.	Check whether: <ul style="list-style-type: none"> • Minutes stated the name of Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting. Minutes of Annual General Meeting, also stated the serial number of the Meeting. • Minutes recorded the names of the Directors and Company Secretary present at the Meeting in alphabetical order or in any other logical manner, starting with the name of the person in the Chair. • Minutes included the other specific contents, wherever applicable, in accordance with the Standards. 		
59.	The summary/brief report on e-voting or postal ballot including the summary of scrutinizers report in respect of resolutions passed through e-voting/postal ballot has been recorded in the minutes book.		
60.	Each item of business taken up at the Meeting was numbered to enable ease of reference or cross reference.		

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S. No.	Particulars	Compliance	Remarks
Signing and dating			
61.	Minutes are initialled, dated and signed in accordance with the Standards.		
Inspection & Extracts of Minutes			
62.	The requirements of the Standards in respect of inspection of Minutes and providing extracts thereof were duly complied with.		
Preservation of Minutes and other Records			
63.	Minutes of all Meetings are preserved permanently in physical or in electronic form with Timestamp in the custody of Company Secretary or any Director duly authorised by the Board.		
64.	Minutes of all Meetings of the transferor company as handed over to the transferee company, if any, are preserved permanently.		
65.	Office copies of Notices, scrutiniser's report and other related papers are preserved in good order in physical or electronic form in accordance with the Standards.		
66.	Office copies of Notices, scrutiniser's report and related papers of the transferor company, as handed over to the transferee company, are preserved in accordance with the Standards.		
67.	The requisite approval of the Board/Central Government is obtained, wherever necessary to destroy any document in accordance with the Standards.		
Report of the Annual General Meeting			
68.	In case of listed public company, a report on the Annual General Meeting (AGM), including a confirmation that the Meeting was convened, held and conducted as per the provisions of the Act was		

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Compliance	Remarks
	prepared in the prescribed form and filed with the Registrar of Companies within 30 days of the conclusion of the AGM.		
Disclosure			
69.	The Annual Return of the Company disclosed the date of Annual General Meeting held during the financial year.		

8

GENERAL LAWS & SPECIFIC EVENTS

General Laws in Secretarial Audit

The Form MR-3 as notified by the MCA under section 204 of the Companies Act, 2013 has provided that the Secretarial Auditor shall report on the status of the compliance of Other laws as may be applicable specifically to the company as specified in point no. (vi) of MR-3.

Further the MR-3 also provides for further reporting on the status of the compliance along with the comments on the adequacy of the systems and procedures in the company to manage the compliance of the laws, rules, regulations and guidelines applicable to the company under the following paragraph of the report.

"I/we further report that there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines."

This part of the Secretarial Audit report specifically refers to the compliance of the other applicable laws apart from the Laws covered in the MR- 3 and Laws specifically applicable to the company.

Identification of Applicable Laws

The Secretarial Auditor may take note of various laws applicable to the Company as identified by the Management of the company; also the auditor shall carry his own efforts to identify various other laws as may be applicable to the company.

Specific Laws and General Laws

Segregation of laws applicable on the Company into the Industry specific and general is essential for Secretarial Audit. After considering the following factors the auditor should make the segregation of the same based on the laws being applicable on the Company:

- Key financial parameters such as Turnover, Paid-up share capital, Net worth, Borrowings, etc.
- Geographic location of registered office, units/divisions/plants/branches, etc.
- Status of company such as listed/unlisted
- Type/Class of company such as Private, Public, Holding, Subsidiary, Foreign, Nidhi, Producer, Section 8, etc.
- Registration with various authorities such as SEZ, Sectoral Regulators, etc.
- Segment such as Manufacturing/Trading/Service/e-commerce and Industry classification thereof
- Agreements governing rights, obligations of shareholders such as Joint venture, shareholders'

GUIDANCE NOTE ON SECRETARIAL AUDIT

agreements.

- Number, class and category of employees/workers such as women, contractual employees, etc.

The auditor should comprehensively verify all laws, rules, regulations made for regulation of specific Industry and should assess the adequacy of systems and process for other General laws applicable to the Company other than Industry Specific Laws and laws specifically covered under Form MR-3.

Further, the Secretarial Auditor should also report on whether –

- the Board of Directors of the Company is duly constituted with proportion of Executive Directors, Non-Executive Directors, Independent Directors, and Women Director.
- the changes in the composition of the Board of Directors that took place during the period under review were carried out in compliance with the provisions of the Act.
- adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance, and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.
- majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.

Secretarial Auditor is required to report and provide details of specific events and actions that occurred during the reporting period having major bearing on the affairs of the company in pursuance of above referred laws/rules & regulations

Scope of Secretarial Audit as decided by the Council of ICSI (specific reference to other laws as may be applicable specifically to the company)

The Council of the ICSI at its 226th meeting held on November 21, 2014 decided on the Scope of Secretarial Audit relating to reporting of Specific and General laws, which is as under:

- “Reporting on compliance of ‘Other laws as may be applicable specifically to the company’ shall mean all the laws which are applicable to specific Company for example for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry; likewise for a company in petroleum sector- all laws applicable to petroleum industry; similarly for companies in pharmaceutical sector, cement industry, etc.

Examining and reporting whether the adequate systems and processes are in place to monitor and ensure compliance with general laws like labour laws, competition law, environmental laws.”

Reporting of General Laws

As stated above, the Secretarial Auditor should verify and report that adequate system and processes are in place to monitor and ensure compliance with general laws like labour laws, competition law, and environmental laws

GENERAL LAWS & SPECIFIC EVENTS

The General Laws relating to Labour laws includes:

1. Factories Act, 1948
2. Industrial Disputes Act, 1947
3. The Payment of Wages Act, 1936
4. The Minimum Wages Act, 1948
5. Employees' State Insurance Act, 1948
6. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
7. The Payment of Bonus Act, 1965
8. The Payment of Gratuity Act, 1972
9. The Contract Labour (Regulation & Abolition) Act, 1970
10. The Maternity Benefit Act, 1961
11. The Child Labour (Prohibition & Regulation) Act, 1986
12. The Industrial Employment (Standing Order) Act, 1946
13. The Employees' Compensation Act, 1923
14. The Apprentices Act, 1961
15. Equal Remuneration Act, 1976
16. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959

To ensure existence of adequate systems and processes in the company, the Compliance status of the above indicative list of Central / State Labour laws and Local laws should be verified by the Secretarial Auditor. Further the Auditor should also verify the procedure followed by the company, Responsibility/ onus of doing compliance, timelines for doing compliance, Compliance chart, etc.

2. Competition Law Compliances

The Competition Act, 2002 provides a general legal framework prohibiting anti-competitive agreements, abuse of dominant position and regulating certain combinations.

(i) Periodical Self Assessment

It is important to note that the Act operates on a "self-assessment" basis, meaning that businesses must determine for themselves whether its agreement, conduct, M & A transaction will be lawful or could breach the provisions of the Act particularly in view of the fact that there are no block exemptions, market share based test to evaluate anti-competitive conduct as prevalent in other matured jurisdictions such as European Union. In this context, it is for businesses to carryout self assessment of their business practices and take steps to ensure that their practices, business contracts and dealings, etc. comply with the provisions of the Act.

(ii) Abuse of Dominant Position

Competition Act, 2002 does not prohibit the mere possession of dominant position, but only its

abuse, thus recognizing that a dominant position may have been achieved through superior economic performance. Once it is determined that an enterprise is in dominant position, then the next question that arises is whether there has been an abuse of dominant position.

In particular Section 4(2) states that there shall be an abuse of dominant position if an enterprise indulges in any of the activities listed in the sub-section, these being unfair or discriminatory condition or price including predatory pricing, limiting or restricting production or technical or scientific development, denying market access, imposing supplementary obligations having no connection with the subject of the contract, or using dominance in one market to enter into or protect another relevant market.

(iii) Regulation of Combinations

According to the provisions of the Competition Act, 2002, combinations are discouraged, if they reduce or harm competition. Act does not provide for monitoring all kinds of combinations by the CCI, for the reason that very few Indian companies are of international size and that in the light of continuing economic reforms, opening up of trade and foreign investment, a great deal of corporate restructuring is taking place in the country and that there is a need for mergers, amalgamations etc. as part of the growing economic process before India can be on an equal footing to compete with global giants, as long as the mergers are not prejudicial to consumer interest.

It is in this context, the provisions relating to combinations in the Act are fairly liberal, in the sense that the thresholds are relatively high, and if the Commission fails to complete the investigation and pass an order regarding the combination within the prescribed time period, the combination is deemed to have been approved.

The Competition Act, 2002 regulates those combinations which, in certain circumstances, causes or is likely to cause an appreciable adverse effect on competition within relevant market in India and renders such a combination as void.

3. Environmental Laws

India's economic development propelled by rapid industrial growth and urbanization is causing severe environmental problems that have local, regional and global significance. Recognising the need for regulating the factors which are affecting environment, Government of India has established an environmental legal and institutional system to meet these challenges within the overall framework of India's development agenda and international principles and norms.

(i) Legal Framework

India has an elaborate legal framework with number of laws relating to environmental protection. key national laws include the following:

- Water (Prevention and Control of Pollution) Act, 1974;
- Water (Prevention and Control of Pollution) Cess Act, 1977;
- Air (Prevention and Control of Pollution) Act, 1981;
- Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;

GENERAL LAWS & SPECIFIC EVENTS

- The Biodiversity Act,2002;
- The National Green Tribunal Act,2010;
- Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008;
- Plastic Waste Management Rules, 2016;
- Bio-Medical Waste Management Rules, 2016;
- Construction and Demolition Waste Management Rules, 2016;
- E-waste Management Rules, 2016;
- The Batteries (Management and Handling) Rules, 2001 made under the Act.

(ii) List of Projects Requiring Environmental Clearance from the Central Government

- Nuclear Power and related projects such as Heavy Water Plants, Nuclear Fuel Complex, Rare Earths.
- River valley projects including hydel power, major irrigation and their combination including flood control.
- Ports, harbours, airports (except minor ports and harbours).
- Petroleum refineries including crude and product pipelines.
- Chemical fertilizers (nitrogenous and phosphatic other than single super phosphate).
- Pesticides (Technical).
- Petrochemical complexes (Both Olefinic and aromatic) and Petrochemical intermediates such as DMT, Caprolactam LAB etc. and production of basic plastics such as LLDPE, HDPE, PP, PVC.
- Bulk drugs and pharmaceuticals.
- Exploration for oil and gas and their production, transportation and storage.
- Synthetic rubber.
- Asbestos and asbestos products.
- Hydrocyanic acid and its derivatives: (a) Primary metallurgical industries (such as production of Iron and Steel, Aluminium, Copper, Zinc, Lead and Ferro Alloys), (b) Electric arc furnaces (mini steel plants).
- Chloralkali industry.
- Integrated paint complex including manufacture of resins and basic raw materials required in the manufacture of paints.
- Viscose staple fibre and filament yarn.
- Storage batteries integrated with manufacture of oxides of lead and lead antimony alloys.
- All tourism projects between 200-500 meters of High Water Line and at locations with an

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elevation of more than 1,000 metres with investment of more than Rs. 5 crores.

- Thermal Power Plants.
- Mining Projects (major minerals) with leases more than 5 hectares.
- Highway Projects.
- Tarred roads in Himalayan and or Forest areas.
- Distilleries.
- Raw Skins and Hides.
- Pulp, Paper and Newsprint
- Dyes.
- Cement.
- Foundries (individual).
- Electroplating.
- Meta amino phenol

(iii) Industries which require Industrial Licensing

- Coal and Lignite
- Petroleum (other than crude) and its distillation products.
- Distillation and brewing of alcoholic drinks.
- Sugar
- Animal fats and oils and their preparations
- Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
- Asbestos and asbestos-based products.
- Plywood, decorative veneers and other wood based products such as particle board, medium density fibre board, and block board.
- Leather
- Tanned or dressed fur skins.
- Paper and Newsprint except bagasse based unit. (i.e. except units based on minimum 75% pulp from agricultural residues, bagasse and other non-conventional raw materials).
- Electronic aerospace and defence equipment all types.
- Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches, explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations.
- Drugs and Pharmaceuticals (according to Drug Policy)

GENERAL LAWS & SPECIFIC EVENTS

- Entertainment electronics (VCRS, colour TVs, CD players, tape recorders).

(iv) List of Polluting Industries:

- Primary metallurgical producing industries viz.. zinc, lead, copper, aluminium and steel.
- Paper, pulp and newsprint.
- Pesticides / insecticides.
- Refineries.
- Fertilizers.
- Paints.
- Dyes.
- Leather tanning.
- Rayon.
- Sodium / potassium cyanide.
- Basic drugs.
- Foundry.
- Storage Batteries (lead acid type).
- Acids / alkalies.
- Plastics.
- Rubber - synthetic.
- Cement.
- Asbestos.
- Fermentation industry.
- Electroplating industry.

4. Reporting of Specific Event under Secretarial Audit Report

The Secretarial Auditor shall identify and report all events/actions having major bearing on the Company's affairs/ Governance in pursuance of the applicable laws, rules, regulations, guidelines, standards, etc. An event/action may be considered as having major bearing on Company's affairs includes the following situations:

- Events/actions altering the charter documents of the Company
- Changes in the Capital structure of the company
- Change in the affairs/management of the company
- Change in the licensing or permission for the business operation of the company

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- Capacity expansion and utilization of the company
- Sale/ Disposing of the substantial assets of the company
- Entering in to Joint ventures agreements etc.

Expression of Audit Limitation

In case either due to restrictions or circumstantial limitations, necessary information cannot be accessed by the secretarial auditor which may /may not have the impact on the report of the Auditor, in such cases, the auditors should mention such limitation in the Secretarial Audit Report.

9

BOARD PROCESSES

Introduction

Directors, collectively called Board of Directors, in fulfilling the fiduciary objectives need to ensure that the company adheres to transparent, ethical and responsible governance of the company. It is, therefore, important that the Board processes of the company are robust.

The board process refers to the processes followed for decision making by the Board and its committees. They can be broadly divided into two parts namely:-

1. Part A – Board Structure
2. Part B – Board Systems and Procedures

PART A – BOARD STRUCTURE

The expression covers various attributes and dimensions of boards ranging from size and diversity to balancing of various interests and independence. The Board structure can further be divided as under:

A. Size and Composition of Board

S. No.	Particulars	Remarks
1.	Check that the minimum number of directors in a private company is 2 and public company is 3.	
2.	Check that the maximum number of directors does not exceed fifteen, In case the company has exceeded the maximum limit has it passed special resolution for the same. (In case of a government company provisions relating to maximum number of directors does not apply).	
3.	In case of a listed public company Check whether there is optimum combination of executive and non-executive directors, whether the Board of Directors comprise of not less than fifty percent non- executive directors (NEDs) and atleast one woman director	
4.	In case the company falls under following category, check that the company has appointed atleast one woman director– (I) every listed company; (II) every other public company having– <ul style="list-style-type: none">• paid-up share capital of one hundred crore rupees or	

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S. No.	Particulars	Remarks
	<p style="text-align: center;">more; or</p> <ul style="list-style-type: none"> • turnover of three hundred crore rupees or more 	
5.	<p>In case the company is a listed public company check:</p> <ul style="list-style-type: none"> • if the Chairperson of the Board is a Non-Executive Director, atleast one-third of the Board comprises of independent directors. • if the company does not have a regular Non-Executive Chairman, atleast half of the Board comprises of independent directors. • if the regular Non-Executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions is at the Board level or at one level below the Board, atleast one-half of the Board of the company consists of independent directors 	
6.	<p>In case the company falls under following category check if company has appointed at least two directors as independent directors:</p> <ol style="list-style-type: none"> i. the Public Companies having paid up share capital of ten crore rupees or more; or ii. the Public Companies having turnover of one hundred crore rupees or more; or iii. the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees: <p>in case a company covered under the relevant law/rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.</p>	
7.	<p>Check whether the company has entered in to the Shareholders Agreement, Joint venture Agreement, Loan Agreement and such agreement provides for the Appointment of Director, if so, whether such terms are also complied or not.</p>	
8.	<p>Ensure that all the independent directors meet the qualifying criteria, for the purpose check the declaration given by every independent director to the board in terms of the Companies Act, 2013 and the SEBI(LODR) Regulations, 2015.</p>	
9.	<p>Check whether the independent directors has given declaration</p>	

BOARD PROCESSES

S. No.	Particulars	Remarks
	of independence individually on an annual basis, declaring that he satisfies the criteria of independence as provided under the Companies Act, 2013.	
10.	<p>Check the formal letter of appointment given to independent directors and the terms and conditions of appointment are available on company's website as per the Companies Act, 2013.</p> <p>Check whether the independent directors has provided remuneration by way of fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as approved by the members.</p> <p>Check whether the independent directors hve availed any stock options.</p> <p>Check whether all fees or compensation, paid to non-executive directors, including independent directors are recommended by the Board of Directors and has been approved by the shareholders in general meeting.</p> <p>Check whether the remuneration/ stock options were paid within the approved limits by the shareholders.</p> <p>In case the sitting fees payable to the non-executive directors exceeds the limit prescribed under the Companies Act, 2013 check whether the prior approval of shareholders in general meeting has been obtained.</p>	
11.	<p>In case of a listed company, Whether the company has appointed the small shareholder Director.</p> <p>Check whether the Small Shareholders have demanded that their representative should be elected to the Board upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, at least 14 days before the meeting.</p> <p>Check whether the requisite compliance w.r.t. Advertisement, notice to the members has been made.</p>	
12.	<p>Check that director representing small shareholders</p> <ul style="list-style-type: none"> i. is not subjected to retirement by rotation and ii. is not holding such position in more than two companies. 	
13.	<p>Check whether the small shareholder director has been appointed in any other company, which is having conflict or competition with the business of first company.</p>	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	Check that the person is not appointed for a period exceeding three consecutive years.	
14.	Check that at least one director of the company has stayed in India for a total period of not less than 182 days in previous calendar year.	
15.	Check whether the Company has filled the vacancies due to resignation, casual vacancies, and vacation of office within the respective time limits according to the provisions of the Companies Act, 2013.	
16.	Check whether the board has appointed the separate individuals as Key Managerial Personnel i.e. Managing Director, Company Secretary and Chief Financial Officer in the company.	

PART B - BOARD SYSTEMS AND PROCEDURE

1	Check that the company held its first meeting in 30 days of incorporation and a minimum number of four meetings of its Board of Directors during the year in such a manner that there was gap of not more than one hundred and twenty days between two consecutive meetings of the Board.	
2	Check that the notice in writing was sent to every director at his address registered with the company either by hand delivery or by post or by electronic means at least seven days prior to the meeting. In case meeting of the Board was called by giving not less than seven days' notice ensure that at least one independent director, if any, was present at the meeting. In case of absence of independent directors from such a meeting of the Board, check that decisions taken at such a meeting were circulated to all the directors and are ratified by at least one independent director, if any. Check whether the notice to be supported by agenda giving writeup on each item.	
3	If the company provides audio-visual facility, check that the notice of the meeting informs that the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and also provide necessary information enable the directors to participate through video conferencing mode or other audio visual means. Check whether the video conferencing is recorded and kept	

BOARD PROCESSES

S. No.	Particulars	Remarks
	under safe custody	
4	<p>Check that following matters were not dealt through video conferencing or other audio visual means in board meeting:</p> <ol style="list-style-type: none"> i. the approval of the annual financial statements; ii. the approval of the Board's report; iii. the approval of the prospectus; iv. the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act; and v. the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover. <p>Provided that where there is quorum presence in a meeting through physical of directors, any other director may participate conferencing through video or other audio visual means.</p>	
5	Check that the quorum for a meeting of the Board of Directors of a company was present i.e. one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means was also counted for the purpose of quorum.	
6	Check that the independent directors of the company had at least one meeting in a financial year, without the attendance of non-independent directors and members of management.	
7	Check that in separate meeting of independent directors they reviewed the performance of non-independent directors and the Board as a whole and reviewed the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors and to assess, the quality, quantity and timeliness of flow of information between the company management and the Board which is necessary for the Board to effectively and reasonably perform its duties.	
8	Check that every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year has in its Board's report made a statement indicating the manner in which formal annual evaluation [of the performance of the board, its committee and of individual director has been	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	made by the Board of its own performance and that of its committees and individual directors.	
9	Check that every director discloses his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP-1, at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made.	
10	Check whether the interested director has participated when such contract or arrangement was taken up for discussion and was not counted for the quorum for the same.	
11	In case of listed company, Check that all material transactions with related parties have been placed before the Audit committee and disclosed quarterly along with the Corporate Governance report filed with the Stock Exchanges.	
12	Check that the company has formulated a policy on materiality of Related Party Transaction and also on dealing with Related Party Transactions and the same is disclosed on its website and also in the Annual Report.	
13	In case of listed company check that the all Related Party Transactions had prior approval of the Audit Committee.	
14	In case the Audit committee has provided, omnibus approval for certain Related Party Transaction, ensure that the such transaction are within the criteria of the approval and such approval shall not be provided for a period exceeding one year.	
15	Check whether the audit committee reviewed, at least on a quarterly basis, the details of related party transactions entered into by the company pursuant to each of the omnibus approvals given by the Committee.	
16	All Related Party Transactions have been approved by the shareholders. In case of a listed company ensure that the related parties have not voted on material related party transaction whether the entity is a related party to the particular transaction or not. (This shall not apply to transactions between wholly owned subsidiary and holding company and between two government	

BOARD PROCESSES

S. No.	Particulars	Remarks
	companies.)	
17	<p>Check the Board periodically review the systems and processes followed by the company</p> <p>Whether such systems and processes are adequately commensurate with its size and operations of the company</p> <p>Whether the company has compliance management frame work to monitor and ensure compliance with applicable laws, rules, regulations and guidelines and that such systems and processes are operating effectively.</p>	
18	<p>Check that the board of directors has laid a code of conduct for all members of board of directors and senior management of the listed entity.</p> <p>Whether the company has received the confirmation of compliance of the code of conduct form the Directors and officers of the company.</p>	
19	<p>Check that the Board periodically reviews compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.</p> <p>Check whether the board has identified and keep a track on the high risk area and critical compliance of the company.</p>	
20	<p>Check that the Company has succession plan for his Key Managerial Personnel and senior officials.</p> <p>If so, Check whether the Board of the company satisfies with the existing succession plans in place.</p>	
21	<p>Check that the minutes of board/ committee meetings are properly maintained in accordance with the Act.</p>	
22	<p>Check whether the company has complied with the Secretarial Standards (SS-1 &SS-2) issued by ICSI.</p>	
BOARD COMMITTEE		
1	<p>Check whether the anydirector is a member in more than ten committees or acting as Chairman of more than five committees across all companies excluding private companies, foreign companies and section 8 companies, in which he is a director.</p>	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
2	<p>Check where the company falls under any of the following categories:</p> <ul style="list-style-type: none"> i. a listed company; ii. all public companies with a paid up capital of ten crore rupees or more on the date of last audited Financial Statements; iii. all public companies having turnover of one hundred crore rupees or more on the date of last audited Financial Statements; iv. all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more on the date of last audited Financial Statements <p>If yes, check that the Board of directors have constituted an Audit Committee and a Nomination and Remuneration Committee of the Board.</p>	
3	<p>Check that the audit committee consists of a minimum of three directors with a majority of independent directors.</p> <p>In case of listed company Two-third of the total number of members of audit committee shall be independent directors.</p> <p>Ensure that the board's report discloses the composition of an audit committee.</p>	
4	<p>Check that the majority of members of Audit Committee including its Chairperson are persons with ability to read and understand the financial statement.</p> <p>In case of listed company all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.</p> <p>In case of listed company, check whether the Chairman of the Audit Committee is an independent director and that the Chairman of the Audit Committee was present at Annual General Meeting to answer the queries of shareholder/s.</p>	
5	<p>Check that the Audit Committee of the company if any, in consultation with the Internal Auditor, has formulated the scope, functioning, periodicity and methodology for conducting the internal audit.</p>	

BOARD PROCESSES

S. No.	Particulars	Remarks
6	<p>Check whether the company falls under any one of the following categories :</p> <p>i. a listed company;</p> <p>ii. a company which accepts deposits from the public;</p> <p>iii. a company which has borrowed money from banks and public financial institutions in excess of fifty crore rupees.</p> <p>If yes, check that the company has constituted vigil mechanism for their directors and employees to report their genuine concerns or grievances.</p>	
7	<p>Check that the terms of reference (in addition to other items) of audit committee ensures overseeing the vigil mechanism of the company.</p>	
8	<p>In case of listed companies, check whether the details relating to Related party transactions entered into by the company pursuant to each omnibus approval has been placed before the audit committee at least on quarterly basis.</p>	
9	<p>In case of listed company check that the Audit Committee has met at least four times in a year and not more than one hundred days have elapsed between two meetings.</p>	
10	<p>In case of listed company check that the quorum of audit committee was maintained in all meetings i.e. either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.</p>	
11	<p>Check that any recommendation of the audit committee which is not accepted by the Board is disclosed in the Board's report.</p>	
12	<p>Check that the Nomination and Remuneration Committee consists of atleast three or more non-executive directors out of which not less than one-half are independent directors.</p>	
13	<p>Check whether the Chairman or a member of the nomination and remuneration committee was present at the Annual General Meeting, to answer the shareholders' queries.</p>	
14	<p>Check whether the board's report provides the salient features of the remuneration policy relating to the remuneration of the directors, key managerial personnel and other employees and</p>	

GUIDANCE NOTE ON SECRETARIAL AUDIT

S. No.	Particulars	Remarks
	the evaluation criteria of independent directors. Whether such policy has been placed on the website of the company.	
15	Check whether the remuneration to KMPs is as per the remuneration policy framed by the company	
16	Check that where a company consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year has constituted a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.	
17	Check whether the Chairman or a member of the Stakeholders Relationship Committee was present at the Annual General Meeting, to answer the shareholders' queries.	
18	Check that every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year has constituted a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director is an independent director.	
19	Check that the board's report discloses the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.	
20	Check that the Corporate Social Responsibility Policy for the Company was approved by the board of directors and the contents of such Policy are disclosed in its report and also place it on the company's website.	
21	Check that the composition of the all committees are also disclosed in the Board's Report.	

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SPECIMEN OF QUALIFIED SECRETARIAL AUDIT REPORT

FOR THE FINANCIAL YEAR ENDED ON 31ST March, 20__

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

To,

The Members, XYZ Limited

I/We have conducted the secretarial audit of the compliance of applicable statutory provisions and the adherence to good corporate practices by XYZ Limited (hereinafter called the Company). Secretarial Audit was conducted in a manner that provided me/us a reasonable basis for evaluating the corporate conducts/statutory compliances and expressing our opinion thereon.

Based on my/our verification of the Company 's books, papers, minute books, forms and returns filed and other records maintained by the Company and also the information provided by the Company, its officers, agents and authorized representatives during the conduct of secretarial audit, I/We hereby report that in my/our opinion, the company has, during the audit period covering the financial year ended on 31st March, 20.... complied with the statutory provisions listed hereunder and also that the Company has proper Board-processes and compliance mechanism in place to the extent, in the manner and subject to the reporting made hereinafter:

I/We have examined the books, papers, minute books, forms and returns filed and other records maintained by XYZ Limited for the financial year ended on 31st March, 20... according to the provisions of:

- (i) The Companies Act, 2013 (the Act) and the rules made thereunder;
- (ii) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder;
- (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
- (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
- (v) The Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act') viz.:-
 - (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
 - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992/ SEBI (Prohibition of Insider Trading) Regulations, 2015;

GUIDANCE NOTE ON SECRETARIAL AUDIT

- (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999/ SEBI (Share Based Employee Benefits) Regulations, 2014;
 - (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
 - (f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
 - (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
 - (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
 - (i) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- (vi) and other applicable laws like in case of a pharmaceutical Company, the Pharmacy Act, 1948; Drugs and Cosmetics Act, 1940; Homeopathy Central Council Act, 1973, etc.

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

- (i) Secretarial Standards issued by The Institute of Company Secretaries of India.
- (ii) The Listing Agreements entered into by the Company with Stock Exchange.

During the period under review the Company has complied with the provisions of the Act, Rules, Regulations, Guidelines, Standards, etc. mentioned above except to the extent as mentioned below:

1. *In respect of issue of further shares, company did not pass a special resolution before allotting shares to persons other than existing members. This is a non-compliance of section 62 of the Companies Act, 2013.*
2. *Where as in terms of the provisions of Section 149(4) & 149(5) of the Companies Act, 2013 read with rule 4 of the Companies (Appointment And Qualification Of Directors) Rules, 2014 and listing agreement, the Company was required to appoint Independent Directors on the Board of the Company the Company could not comply with the same.*
3. *Where as in terms of the provisions of Section 149(1) of the Companies Act, 2013 read with rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the Company was required to appoint at least one Women Director on the Board of the Company latest by 31st March, 2015, the Company could not comply with the same.*
4. *Whereas in terms of the provisions of Section 177(1) of the Companies Act, 2013 read with rule 6 of the Companies (Meetings of Board and Its Powers) Rules, 2014, the Company was required to constitute an Audit Committee of the Board, the Company could not*

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comply with the same.

5. *Whereas in terms of the provisions of Section 178(1) of the Companies Act, 2013 read with rule 6 of the Companies (Meetings of Board and Its Powers) Rules, 2014 and Regulation 19 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 the Company was required to constitute a Nomination & Remuneration Committee of the Board, the Company could not comply with the same.*
6. *Whereas in terms of the provisions of Section 203 of the Companies Act, 2013, the Company was required to have certain Key Managerial Personnel (KMP). The Company has not appointed a Company Secretary in terms of the provisions of Section 204 of the Companies Act, 2013.*
7. *Whereas in terms of the provisions of Section 203 of the Companies Act, 2013, the Company was required to have certain Key Managerial Personnel (KMP). The Company has not appointed a Chief Financial Officer (CFO) in terms of the provisions of Section 204 of the Companies Act, 2013.*
8. *The Company has not filed/filed with delay following forms/returns required to be submitted with the Registrar of Companies.*
9. *Whereas in terms of the provisions of section 138 of the Companies Act, 2013 the Company has not appointed Internal Auditor during the year.*
10. *Whereas in terms of the Regulation- 33 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 regarding delayed submission of financial result for the year ended 31st March, the quarter ended and the quarter ended. Company has also received notices of penalty in this regard from the Stock Exchanges .*
11. *Whereas in terms of the Regulation 24 (1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, to the extent of appointment of Independent Director on the Board of Material non-listed Indian Subsidiary is not complied with.*
12. *The reporting Compliances with respect to the Foreign Exchange Management Act, 1999 ("FEMA Act") and the Rules and Regulations made thereunder to the extent of issue of GDR and compliances pursuant to Paragraph 4(3) of Schedule 1 of Notification No. FEMA 20/2000-RB dated 03rd May 2000 is not complied in regular quarters and all the quarter reports submitted to the RBI at the last quarter of the Financial Year.*
13. *The Overseas Direct Investment Compliances in terms of section 6 of the Foreign Exchange Management Act, 1999, (42 of 1999) read with Notification No. FEMA.120/RB-2004 dated July 7, 2004, (GSR 757 (E) dated November 19, 2004), viz. Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004, as amended from time to time, however the same is not complied and it's a continued non-compliance since FY 2010-11.*
14. *The compliances (Overseas Direct Investment Compliances) in terms of provisions of the Foreign Exchange Management Act, 1999, (42 of 1999) read with Notification No. FEMA.120/RB-2004 dated July 7, 2004, (GSR 757 (E) dated November 19, 2004), viz.*

GUIDANCE NOTE ON SECRETARIAL AUDIT

Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004, as amended from time to time is not complied.

- 15. *In respect of a acceptance of deposits, company is in the process of taking Insurance policy.*
- 16. *The Company has not filed charge created on its property for obtaining guarantees from its bankers. The Bankers themselves can also file charge and 300 days time is given for filing with late payment fees. If it falls under this category, then it is deemed compliance. Even after 300 days if a condonation of delay application is made, it would be deemed compliance of process until conditions is denied. Only when denied it will be reported as non-compliance.*
- 17 *The Company has got two factory premises where registration under the Factories Act is yet to be done. If in the system, application of registration surfaces, then there is adequate system in place.*
- 18.
- 19.
- 20.

I/we further report that

The Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors and Independent Directors. The changes in the composition of the Board of Directors that took place during the period under review were carried out in compliance with the provisions of the Act except that Form DIR 12 was filed after 30 days from the date of resignation of Mr. X as Director..

Adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance except in one case where notice was not given to Mr. Y in respect of a meeting held on ..., and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.

Majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.

I/we further report that there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines however the compliance reports were not submitted to the Board in time and a delay of about six month was observed in informing the non compliance in respect of Compliances under Payment of Bonus Act, Employees Provident Fund Act.

We further report that during the audit period the company has signed the technical collaboration agreement with UVW Limited but the precise impact of such collaboration can not be reasonably estimated for the time being. Company has received show cause notice from the collector for non

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payment of stamp duty in respect of transfer of immovable property. Company has filed its reply however there is a contingency that company may have to pay a sum of Rupees 50 lacs by way of penalty.

Place: Signature:

Date :

Name of Company Secretary in practice / Firm :

ACS/FCS No.

C P No.:

This report is to be read with our letter of even date which is annexed as Annexure 1 and forms an integral part of this report.

GUIDANCE NOTE ON SECRETARIAL AUDIT

‘Annexure -1’

To,
The Members
XYZ Limited

Our report of even date is to be read along with this letter.

1. Maintenance of secretarial record is the responsibility of the management of the company. Our responsibility is to express an opinion on these secretarial records based on our audit.
2. We have followed the audit practices and processes as were appropriate to obtain reasonable assurance about the correctness of the contents of the Secretarial records. The verification was done on test basis to ensure that correct facts are reflected in secretarial records. We believe that the processes and practices, we followed provide a reasonable basis for our opinion.
3. We have not verified the correctness and appropriateness of financial records and Books of Accounts of the company.
4. Where ever required, we have obtained the Management representation about the compliance of laws, rules and regulations and happening of events etc.
5. The compliance of the provisions of Corporate and other applicable laws, rules, regulations, standards is the responsibility of management. Our examination was limited to the verification of procedures on test basis.
6. The Secretarial Audit report is neither an assurance as to the future viability of the company nor of the efficacy or effectiveness with which the management has conducted the affairs of the company.

Date:
Place:

Signature:
(Name)
Practising Company Secretary
Membership No.
Certificate of Practice No.