

RELEVANT FOR DECEMBER, 2019 SESSION ONWARDS

STUDY MATERIAL

PROFESSIONAL PROGRAMME

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

MODULE 2 PAPER 4



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

© THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

TIMING OF HEADQUARTERS

Monday to Friday
Office Timings – 9.00 A.M. to 5.30 P.M.

Public Dealing Timings
Without financial transactions – 9.30 A.M. to 5.00 P.M.
With financial transactions – 9.30 A.M. to 4.00 P.M.

Phones
011-45341000

Fax
011-24626727

Website
www.icsi.edu

E-mail
info@icsi.edu

PROFESSIONAL PROGRAMME

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

Secretarial Audit is a process to check compliance with the provisions of various laws and rules/ regulations/ procedures, maintenance of books, records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed the due process. It is essentially a mechanism to monitor compliance with the requirements of stated laws.

Compliance management is the method by which corporate manage the entire compliance process. It includes the compliance program, compliance audit, compliance report etc. and in other words it is called compliance solution. Secretarial Audit and Compliance management are the routine tools for effective governance. Compliance management is to be built into the corporate system to avoid non compliances and the Secretarial audit is carried out on periodical basis by an independent professional.

Due diligence is a pre-emptive tool to assess a business transaction. Due diligence is an investigative process for providing the desired comfort level about the potential investment and to minimize the risks such as hidden uncovered liabilities, poor growth prospects, price claimed for proposed investment being on higher side etc., In general due diligence process is transaction based.

This study material is published to aid the students in preparing the paper on Secretarial Audit, Compliance management and Due diligence for Professional Programme. It is part of the educational kit and takes the students step by step through each phase of preparation emphasizing key concepts, principles, comprehending, integrating and advising to resolve complex issues case studies and decision making. Company Secretaryship being a professional course, the examination standards are set very high, with emphasis as expert of concepts, applications, procedures and case laws, for which sole reliance on the contents of the study material may not be enough. Besides Company Secretaries Regulations, 1982 requires the students to be conversant with the amendments to the laws made upto six months preceding the date of examination. This study material may therefore be regarded as basic material and must be read along with the respective amendments in the Act, Rules, Regulations, Order, Circulars, Clarification notified by the Central Government or issued by the respective Regulators.

The coverage of subject is “Hybrid” in nature which requires integrated application of several Core / Ancillary areas or references of the other subjects included in the ICSI Syllabus. This study material has covered such topics to a limited context. The students are advised to refer the relevant topics from the Bare Acts, Rules & Regulation’s and study material of the respective subjects or from the publications such as guidance note, referencer published by the ICSI.

The amendments made up to June, 2019 have been incorporated in this study material. However, it may happen that some developments might have taken place during the printing of the study material and its supply to the students. The students are therefore advised to refer to the supplement uploaded on ICSI website from time to time and ICSI Journal Chartered Secretary and other publications for updation of study material. In the event of any doubt, students may contact the Directorate of Academics at academics@icsi.edu.

Although due care has been taken in publishing this study material yet the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

Should there be any discrepancy, error or omission noted in the study material, the Institute shall be obliged, if the same are brought to its notice for issue of corrigendum.

PROFESSIONAL PROGRAMME

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

This study material is divided into two parts with following weightage of marks:

Part I – Compliance Management (40 Marks)

Part II - Secretarial Audit and Due Diligence (60 Marks)

Part I- Compliance Management

The primary responsibility of a company secretary is to ensure the development and implementation of the compliance framework in a company, Compliance requirement in the various types of the company based on the activity, sector and industry. as the company secretary play a significant role in the creation of the compliance chart of the company and is required to report to the board about the compliance status of the company. It is expected from the student to be well versed with the compliance requirement to the various types of the companies.

This part of study material also covers the documentation, maintenance and search reports. This includes that how records/ documents should be managed by the company secretary and what are the various methods for maintenance of records. However, for various purposes company need to refer the historical documents from the internal records as well as from the various other sources such as records from MCA, Stock Exchanges, records of various other registrars etc.

In view of the various regulatory actions and requirements, it is necessary for professional to know about the company's and its promoters/directors before taking up any assignment or before engaging for any signing and certification work. This part of the study material also covers the role of company secretaries in the various business segments and the requirements, obligation and penal provisions relating to the KYC, signing and certification requirements.

Part II - Secretarial Audit and Due Diligence

Section 204 of the Companies Act, 2013, enable the company secretaries to conduct secretarial audit report for the listed and the public companies, which has open up the new area for company secretaries as secretarial auditor. Further, under various other regulations, the company secretaries are recognised for the providing certification and to act as auditor. The part II of the study material covers these auditing principles, techniques, coverage and the reporting requirement for such audits. The ICSI has constituted the Auditing Standards Board to prescribe the Auditing Standards for the members of ICSI, The Council of the Institute of Company Secretaries of India (ICSI) has approved the issuance of four ICSI Auditing Standards. The Standards are required to be observed by the Company Secretaries undertaking Audits. The Standards seek to promote best auditing practices, uniformity and consistency while conducting audits.

The review of the systems and process adopted by the professional provide support in the setting up the benchmarks of professional practices, the study cover the peer review and quality review guidelines issued by the ICSI and ethical standards to be maintained by the professional.

The strategic and investment decision of any company is depends on the due diligence report on the affairs

of the company and the company secretaries are engaged by the companies for the various purposes of due diligence, the study includes the various requirements in performing such due diligence. The study also covers non-compliance under the Companies Act, 2013, SEBI Act, 1992 and the regulations made thereunder.

Students are strongly advised to go through the ICSI Publications, amendments in laws, articles, and research papers for the detailed understanding and updation for the subject.

PROFESSIONAL PROGRAMME

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

Legal and Regulatory Framework

1. Companies Act, 2013 and Rules made thereunder
2. Securities Contracts (Regulation) Act, 1956 and Rules made thereunder
3. SEBI Act, 1992 \ and Regulations made thereunder including:
 - a. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009/2018
 - b. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
 - c. SEBI (Share Based Employee Benefits) Regulations, 2014
 - d. SEBI (Issue of Sweat Equity) Regulations, 2002
 - e. SEBI (Buy Back Of Securities) Regulations, 1998/2018
 - f. SEBI (Prohibition of Insider Trading) Regulations, 2015
 - g. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
 - h. SEBI (Delisting of Equity Shares) Regulations, 2009
 - i. SEBI (Issue and Listing of Debt Securities) Regulations, 2008
 - j. SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003
4. Depositories Act, 1996
5. 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;
6. Secretarial Standards issued by ICSI.
7. Auditing Standards issued by ICSI.

PROFESSIONAL PROGRAMME

Module 2 – Paper 4

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE (100 Marks)

SYLLABUS

Objective

Part I : To develop expertise in Compliance management, Internal control systems and preparation of various search and status reports.

Part II : To develop expertise in Secretarial Audit and other Audits and to impart knowledge on the process for conducting Due Diligence of various business transactions.

Detailed Contents

PART I : Compliance Management (40 Marks)

1. **Compliance Framework:** Identification of applicable laws, rules, regulations; Risk Assessment; Responsibility center mapping/ allocation; Escalation & reporting; Creation of Compliance framework and reporting system; Review & Updation; Training & Implementation.
2. **Compliances:** (a) Entity wise: Public, Private, Listed, Government, Small Companies, OPC, Section 8 Company, LLP – Annual and Event based compliances. (b) Activity wise: Compliances related to specific activities undertaken. (c) Sector wise: Service Sector, Manufacturing, Trading, E-commerce, Mining, Infrastructure. (d) Industry Specific: Compliances with Industry Specific Laws applicable to the company such as Tourism, Pharmaceutical, FMCG, Hospitality, Information Technology etc. (e) State and Local applicable laws
3. **Documentation & maintenance of records:** Electronic versus Physical repository; General principles of good documentation, coding, storage, preservation, safety & retrieval; Privacy & Control.
4. **Search and Status Report:** Type of Searches, Purpose and Objective of Search Reports, Search under Companies Act, IPR Laws, Property Title Search, Compilation & verification of data published by MCA 21, SEBI, RBI, Stock Exchanges, other regulators/ authorities (national/international), Web-sites and other sources.
5. **KYC:** Carrying out KYC with respect to directors, promoters and client, Compliance with the applicable ICSI Guidelines.
6. **Signing and Certification:** Various Certification(s) by Company Secretary in practice; Pre-certification of Forms; Signing & certification of Annual Return; Corporate Governance Certification; Obligations and Penal provisions.
7. **Segment-wise Role of Company Secretaries:** Knowledge about the segment(s) in which the company is operating, Industry trends and national and international developments. Segment-wise Compliances.

Part II: Secretarial Audit & Due Diligence (60 Marks)

8. **Audits:** Overview and Introduction of Various Audits; ICSI Auditing Standards.
9. **Secretarial Audit:** (i) Overview & introduction: Concept; advantages; legal provisions; risk of Secretarial Auditor; code of conduct. (ii) Scope of Secretarial Audit: (a) Corporate, Securities and Foreign Exchange Laws and Rules and Regulations made there under. (b) Other Laws applicable to the Company. (c) Board Processes, Adequacy of Systems and Processes, Compliance with Secretarial Standards and applicable Accounting Standards and Reporting of Major Events. (d) Corporate conduct & practices.
10. **Internal Audit & Performance Audit:** Objective & Scope; Internal Audit Techniques; Appraisal of Management Decisions; Performance Assessment, Internal Control Mechanism.
11. **Concepts and Principles of Other Audits:** (a) Corporate Governance Audit (b) CSRAudit, (c) Takeover Audit (d) Insider Trading Audit, (e) Industrial and Labour Laws Audit (f) Cyber Audit (g) Environment Audit (h) Systems Audit (i) Forensic Audit (j) Social Audit.
12. **Audit Engagement:** Audit engagement; Appointing authority; communication to previous Auditor; Terms & conditions; Audit fees & expenses; Independence & conflict of interest; confidentiality; Auditing standard on Audit engagement.
13. **Audit Principles and Techniques:** Audit Planning; Risk Assessment; Collection of information/ Records of Audit, Audit Checklist; Audit Techniques, Examination & its process; Enquiry; Confirmation; Sampling; Compliance Test of Internal Control System; Substantive Checking; Dependence on other Expert, Verification of documents/records; Collection of audit evidences; Creation of Audit trails; Analysis of Audit findings; Documentation; materiality; record keeping;
14. **Audit Process and Documentation :** Preliminary Preparations; Questionnaire; Interaction; Audit program; Identification of applicable laws; creation of master checklist; Maintenance of Work-sheet, working papers and audit trails; Identification of events/ corporate actions; Verification; Board composition; Board process; systems and process; identification of events having bearing on affairs of the Company, Auditing standard on Audit process & documentation.
15. **Forming an Opinion & Reporting:** Process of forming an opinion; materiality; forming an opinion on report of third party/expert; modified/unmodified opinion/qualifications; Management Representation Letter, Opinion obtained by Management, Discussion with Management, Evaluating Audit Evidence and forming Opinion, Audit report and drafting of qualifications; Sharing Draft Report with Management with Category of Risk involved with each Remark and Qualification, Signing of Audit reports and its Submission, Auditing standards on forming of an Opinion.
16. **Secretarial Audit:** Fraud detection & Reporting : Duty to report fraud; Reporting of Fraud by Secretarial Auditor; Fraud vs. Non- compliance; speculation; suspicion; Reason to believe; knowledge; Reporting; Professional Responsibilities and Penalties; Record keeping; Reporting of fraud in Secretarial Audit Report.
17. **Quality Review:** Peer Review; Monitoring of Certification and Audit Work by Quality Review Board.
18. **Values Ethics and Professional Conduct:** Case Studies & Practical Aspects.
19. **Due Diligence- I:** Overview and Introduction; Types of Due Diligence; Financial Due diligence; Tax Diligence; Legal Due Diligence; Commercial or Business Diligence – including operations, IT systems, IPRs; Human Resources Due Diligence; Due Diligence for Merger; Amalgamation; Slump Sale; Takeover; Issue of Securities; Depository Receipts; Competition Law Due Diligence; Labour Laws Due Diligence; Due Diligence Report for Bank; FEMA Due Diligence; FCRA Due Diligence; Techniques of Due Diligence and Risk Assessment; Non-Disclosure Agreement.
20. **Due Diligence- II:** Impact Assessment of Non Compliances and Reporting thereof.

Case Laws, Case Studies & Practical Aspects.

LESSON WISE SUMMARY

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

Part I : Compliance Management

Lesson 1 - Compliance Framework

A compliance management system manages the entire compliance process of the company. It includes the compliance program, compliance audit, compliance reporting etc. The compliance program consists of the policies and procedures which guide in adherence of the applicable laws and regulations on the company. Further, the compliance audit is an independent testing of level of compliance with applicable laws and regulations on an Organisation.

The core function of the company secretary is to formation of the compliance framework in association with the other functional heads of the company. The lesson covers process of formation of the compliance frame work and point to be considered while dealing with the corporate compliances.

Lesson 2 - Compliances

Every company incorporated under the Companies Act is required to comply with the various regulatory requirement provided in the laws, However the specific exemptions to the some class of the companies has been provided specifically in the act or through the exemption notifications under the Companies Act, 2013.

As the part of the annual compliances, every company is required to file its financial statement and annual return every financial year before the due date, with the Registrar of Companies. However, there are several event base compliances wherein the company is required to file the report, return or intimation to the concerned Registrar of Companies, which is an time bound activity and any failure in such compliance will liable to action by the various regulators.

The lesson covers the various compliance requirements under the Companies Act and SEBI Law and rule and regulations made thereunder.

Lesson 3 - Documentation & Maintenance of Records

The good documentation promotes good corporate governance practices and improves the compliance level of the company. Also the documentation provides a detailed knowledge of the historical records of the company. The effective documentation provides easy access to the required information on time for the effective and timely utilization of the information. The primary responsibly of a company secretary to prepare and maintain the secretarial and other records, which are required to be kept by the company under the various regulatory requirements.

The lesson covers the various method of documents and the principles to be followed by the professional while preparation of records as well as at the time of preserving the records in the record room.

Lesson 4 - Search and Status Report

The search and status report is a method for confirmation of the status of the company in the records of the various regulators. The report provides the information gathered by a search of specific records made available for inspection in the public domain. The company secretaries provide the search reports based on the

information gathered along with the observations/comments on the status of the company along with necessary explanations desired by the company or any other stakeholder i.e. lenders, regulator etc.

The company secretaries are engaged by the Banks, Financial Institution to provide the search report on the charge on the assets of the company, for property search, search relating to Trade marks, Copy rights and Patents, ROC search etc. to know the actual status of the company. The lesson covers the various type of search reports and content and method of verification of the records from the various sources.

Lesson 5 - Know Your Customers (KYC)

As the banks and Financial Institutions (FIs) are required to follow certain customer identification procedure for opening of accounts, and monitor transactions of suspicious in nature. The company secretaries should also conduct the KYC of their clients companies and the promoters /directors before accepting any assignment and engagement.

The objectives of doing KYC is to stop the corporate vehicles to be used intentionally or unintentionally, by criminal elements for illicit purposes such as money laundering activities, fraud, bribery and corruption, shielding assets from creditors, illicit tax practices, market fraud, terrorist funding, avoiding future risk and the KYC related procedures also enable institution to better understand their customers and their financial dealings. The lesson covers importance of KYC, manner of doing KYC and various KYC requirement for companies, individuals and other types of business organisations.

Lesson 6 - Signing and Certification

Pre-certification means certification of correctness of any document by a professional including Company Secretary in Practice before the same is filed with the respective authority or with the Registrar in terms of the requirements of the Companies Act, 2013 and certification under SEBI Laws. The signing professional should checks the correctness of the particulars stated in form or supporting documents after due consideration of the provisions of the Act and the rules made thereunder. The professional should also ensure that the particulars stated in the form/ disclosure/ certificates are in agreement with the books and records of the company. The lesson covers the prerequisite for the signing and certification by the professionals and the requirement for various forms, annual return, corporate governance certification.

Lesson 7 - Segment-wise Role of Company Secretaries

The role of Company Secretaries is now considered as a senior position or above. Its evolving beyond the administrative work. Company Secretaries are employed as chairs, chief executives and non-executive directors, as well as executives and company secretaries. Some company secretaries are also known in their own companies as corporate secretarial executives/managers.

A company secretary's has core competence in compliance and corporate governance. He popularly known as governance professional and more frequently called upon to guide the corporate board on various strategic, governance and compliance related issues.

The role of company secretary is also termed as legal advisor on the board who needs to have a legal knowledge of all the sectors thus directly indirectly they are the Key Managerial Person (KMP) of the Company. Company secretaries are the primary source of advice on the conduct of business and this can span everything from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning.

The lesson covers various roles of company secretary in employment as well as in practice along with the national and international developments in the role of company secretary.

Part II: Secretarial Audit & Due Diligence (60 Marks)

Lesson 8 - Audits

Audit is an independent examination or inspection of various transactions, the audit can be done internal or external person or by an independent auditor. The idea is to check and verify the transaction by an independent authority to ensure that the affairs of the company are done in a fair manner and there is no misrepresentation in the affairs of the company.

The company secretaries engaged for performing various audits under the statutory requirements and the voluntarily by the companies and the lesson covers the brief description of the various audits.

Lesson 9 - Secretarial Audit

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 from financial year 2014-15 under section 204 of the Companies Act, 2013.

Further, Regulation 24A of the SEBI (LODR) Regulations, 2015, every listed entity and its material unlisted subsidiaries incorporated in India is required to undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in Form No. MR-3 from the year ended March 31, 2019.

The secretarial auditors should detect the instances of non-compliances and in result facilitate taking corrective-measures. The professional should perform an effective due diligence exercise before the issuance of Secretarial Audit Report.

The lesson covers the various requirements under the scope of secretarial audit and process to be followed by the company secretaries while conducting secretarial audit.

Lesson 10 - Internal Audit & Performance Audit

The internal audit is an Independent review and appraisal of financial and operational control systems across the organization. The internal audit also includes the ascertainment of the extent of compliance of policies, procedures, regulations and legislations and facilitate in risk management.

The internal auditor is also involved in structuring programs and activities that safeguard company assets, it also provide internal check systems which minimize the possibility of fraud / early warning signals for identifying fraud.

The provisions of Companies Act, 2013 provides that an internal auditor appointed under section 138 shall either be a chartered accountant or a cost accountant, or such other professional (including company secretaries) as may be decided by the board to conduct internal audit of the functions and activities of the company. The lesson cover the objective& scope of internal audit, manner of engagement, internal audit techniques and the process for reviewing the internal control mechanism in the company.

Lesson 11 - Concepts and Principles of Other Audits

Audit is an independent and systematic examination of statutory records, books of accounts, documents and vouchers of an organization. This mainly performed or conducted to ascertain how far the financial statements as well as non-financial disclosures present a true and fair view of the affairs of the company. Audit provides a significant assurance to the management and other stakeholders on the affairs of the company. The Auditor while conducting audit obtains evidence and formulates an opinion on the basis of his judgement which is communicated through his audit report.

As an independent professional, auditor provide third party assurance on every subject matter for which he has been engaged. The lesson covers the areas which are commonly audited by the company secretaries such as Corporate Governance Audit, CSR Audit, Takeover Audit, Insider Trading Audit, Industrial and Labour Laws Audit, Cyber Audit, Environment Audit, Systems Audit, Forensic Audit, Social Audit etc.

Lesson 12 - Audit Engagement

The Companies Act, 2013 provides that the statutory auditors of the company shall be appointed by the members of the company, through a resolution passed at the annual general meeting. However In case of other audit the auditors are appointed by the board of the company or by the person authorized by the board of the company, by the tribunal/ courts, company liquidators etc.

In any auditing assignment, the engagement letter is the governing documents for whole audit process, as it covers the scope of audit, terms & conditions of audit, responsibility of auditor and the management etc.

The lesson covers the various requirements of laws and the points to be considered while taking up the audit engagement by any professional.

Lesson 13 - Audit Principles and Techniques

The Auditing principles are the generally accepted rules, which are commonly applicable for the every type of Audit, whereas the audit techniques stand for the methods that are adopted by an auditor to obtain audit evidence and performance of the audit as per the scope of the audit. An auditor can apply various techniques of auditing which may be applied by the auditor under different circumstances of audit.

The purpose of an audit is to enhance the degree of confidence in the secretarial records/non-financial statements, of intended users. An auditor expresses his opinion as to whether the significant reporting aspects of an enterprise are duly covered within the prescribed framework. The auditor is required to conduct the audit and express his opinion based on these principles and techniques for conducting audit.

The lesson covers the various auditing principles and techniques which are useful for undertaking the audit.

Lesson 14 - Audit Process and Documentation

The auditing process is a way to ensure that the affairs of the company were in accordance with the applicable laws, rules, regulations and principles and that they are free of material misstatement. The audit process include the phase like Pre-Planning, Planning, Fieldwork, Reporting, Corrective Action etc.

The audit documentation is the written record of the basis for the auditor's conclusions. The audit documentation also facilitates the planning, performance, and supervision of the engagement, and is the basis for the review of the quality of the work because it provides the reviewer with written documentation of the evidence supporting the auditor's significant conclusions. Among other things, audit documentation includes records of the planning and performance of the work, the procedures performed, evidence obtained, and conclusions reached by the auditor. Audit documentation also may be referred to as work papers or working papers. The lesson covers designing the auditing program, procedures and documentation procedures relating to the performance of the audit.

Lesson 15 - Forming an Opinion & Reporting

On the completion of each audit assignment, the auditor need to prepare a written report setting out the audit observations and conclusions in an appropriate form; the content of the audit report should be easy to understand, free from ambiguity and supported by sufficient, competent and relevant audit evidence and be independent, objective, fair, complete, accurate, constructive and concise.

The content of the opinion will need to indicate unambiguously whether it is unqualified or qualified and, if the

same is qualified, whether it is qualified in certain respects or is adverse or a disclaimer of opinion.

The lesson covers process of forming opinion and the process to be followed by the auditor before submitting the final reports to the management.

Lesson 16 - Secretarial Audit : Fraud Detection and Reporting

Under the provisions of Companies Act, 2013, the company secretaries like other statutory auditors can now act as whistle blowers if they detect any fraud. The Companies Act, 2013 provides that if an auditor of the company, in course of the performance of audit has reason to believe that an offence of fraud, which involves or is expected to involve such is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government or the Board/ Audit Committee of the company within the prescribed timeline and the manner provided in the law. The lesson covers the various aspects relating to the identification of fraud and the manners of reporting the same to the Audit Committee/ Board or to the Central Government.

Lesson 17 - Quality Review

The Professional Codes of Conduct are one of the most important characteristics of a profession. Such Codes of Conduct illustrate the high ethical and professional standards to reassure stakeholders of two conditions, namely, that any particular set of professional services is being rendered not only by (i) properly qualified or technically expert persons but also (ii) by persons whose professional standards merit the high degrees of trustworthiness, typically required of professionals.

The Peer Review mechanisms used in working groups for many professional occupations only to strengthen systems and infrastructure to enhance the quality of professional services. Whereas the Quality Review Board (QRB) has been set up to review and enhance the quality of the services rendered by the members of the ICSI. The Board aims to standardize the practices followed by the Company Secretaries and enhance the quality of the services rendered by the members of ICSI on continuous basis.

The lesson covers the various aspects relating to the peer review of the company secretaries in practice and the highlights relating to the Quality of Audit & Attestation Services by the company secretaries.

Lesson 18 - Values Ethics and Professional Conduct

India with its inherent spiritual strength, rich traditions and strong value systems- which drive from the core of family run businesses to large corporate houses become the role model for other countries in corporate governance. The company secretaries being practitioners of corporate governance should play a leading role in making India a global leader in their field.

Further, the company secretary is not only the conscience keeper of an enterprise, but he also has a larger social responsibility represent internal and external stakeholders of the company and to play a pivotal role in ensuring compliances and implementing principles of good governance.

Accordingly, every professional should inculcate highest standards of professional ethics and moral values and adherence to professional code of conduct in its true letter and spirit while working in the various capacities. The lesson covers the various ethical principles, issues, practical aspects and the recent case laws in the Indian corporate sectors.

Lesson 19 - Due Diligence- I

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

For any strategic business transactions the detailed analysis of both financial and non-financial information requires careful and methodological investigation of business processes and the parties involved. Due diligence of business transaction includes methodical investigation of information relating to the financial, human resources, tax, environmental, legal matters, intellectual property matters etc. The lesson covers the various types of the due diligence, due diligence process and the points need to be considered while performing due diligence.

Lesson 20 - Due Diligence- II

Corporate compliance involves adhering to various rules, regulations, laws, and standards which are designed to protect business, employees, and all others stake holders involved in the organization. The impact of the non-compliance of such rules and regulations on a business could be in the form of monetary fines, disqualification of directors, prohibition of doing business, regulatory enforcement, and court cases or even extended to the closure of the business entity.

In the recent years the instances of the non-compliances have been continuously increased and the business owners are getting impatient as these consequences would affect their eligibility and affect the business in many ways.

The lesson covers the various non-compliances under the Companies Act, 2013, SEBI Act, 1992 & RBI Act, etc. and the manner of adjudication and compounding of such offences.

LIST OF RECOMMENDED BOOKS/WEBSITES

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

MODULE 2 – PAPER 4

READINGS

1. **ICSI Publications :**
 - The Companies Act, 2013
 - The Companies Rules
 - Premier on Companies Act, 2013
 - Guidance note on Secretarial Audit
 - Referencer on Precertification of E forms
 - Ready Reckoner on Private companies
 - Peer review manual
 - Quality review manual
2. **Taxmann :** SEBI Manual
3. **Regulations/Rules/Guidelines/Circulars issued by SEBI, RBI, MCA etc. from time to time**
4. **Articles by the professionals and Firms**
5. **Important Websites :**
 - www.mca.gov.in
 - www.sebi.gov.in
 - www.rbi.org.in
 - www.finmin.nic.in
 - www.dipp.nic.in
 - www.icsi.edu
 - www.ebook.mca.gov.in

JOURNALS

1. Chartered Secretary : ICSI, New Delhi
2. Student Company : Secretary ICSI, New Delhi

Note:

- (i) Students are advised to read the relevant Bare Acts, Regulations/circulars/rules issued by various regulatory authorities like SEBI, RBI, MCA etc. from time to time in addition to reading of journals like Student Company Secretary, Chartered Secretary etc.
- (ii) The reference to websites of different regulatory authorities is essential.

ARRANGEMENT OF STUDY LESSON

Module-2 Paper-4

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

PART I: COMPLIANCE MANAGEMENT (40 MARKS)

S.No.	Lesson Tittle
1.	Compliance Framework
2.	Compliances
3.	Documentation & Maintenance of Records
4.	Search and Status Report
5.	Know Your Customers (KYC)
6.	Signing and Certification
7.	Segment-wise Role of Company Secretaries

PART II: SECRETARIAL AUDIT & DUE DILIGENCE (60 MARKS)

8.	Audits
9.	Secretarial Audit
10.	Internal Audit and Performance Audit
11.	Concepts and Principles of Other Audits
12.	Audit Engagement
13.	Audit Principles and Techniques
14.	Audit Process and Documentation
15.	Forming an Opinion & Reporting
16.	Secretarial Audit – Fraud Detection and Reporting
17.	Quality Review
18.	Values, Ethics and Professional Conduct
19.	Due Diligence- I
20.	Due Diligence- II

CONTENTS

LESSON 1

COMPLIANCE FRAMEWORK

Introduction	2
Corporate Compliance Framework	2
Preparation of Compliance Chart	4
Content of Compliance Chart	4
Role of Company Secretary in Creation of Compliance Chart	4
Periodical Compliance MIS	8
Compliance Risk - Review and Updation	8
Training and Implementation	11
Compliance Audit	11
Significance of Corporate Compliance Management	12
Apparent, Adequate and Absolute Compliances	12
Secretarial Audit and Compliance Management System	13
Role of Company Secretaries in Compliance Management	14
LESSON ROUND UP	14
SELF -TEST QUESTIONS	14

LESSON 2

COMPLIANCES

Introduction	18
Need for Compliance Management	18
Benefits of Corporate Compliance Management	18
Scope of Corporate Compliance	19
Establishment of Compliance Management Framework	21
Process of Corporate Compliance Reporting (CCR)	21
Entity Wise Compliances	22
Activity Wise Compliances	22
Sector Wise Compliances	22
Industry Specific Compliances	22
State and Local Laws Compliances	24

Compliances Requirements under Companies Act, 2013	24
Compliances by Limited Liability Partnership (LLP)	31
Compliances under Section 8 Company	35
Register, Returns, Books and Other Records to be Kept By Companies	39
Compliances under SEBI (LODR) Regulations, 2015	41
Disclosures to be made at website of the Company	47
LESSON ROUND UP	52
LIST OF FURTHER READINGS	52
SELF -TEST QUESTIONS	52

LESSON 3

DOCUMENTATION AND MAINTENANCE OF RECORDS

Introduction	56
Purpose of Documentation	56
Guiding Principles of Good Documentation	57
Examples of Poor Documentation Practices	57
Examples of Good Documentation Practices	57
Electronic Repository of Documents	58
Advantages of DMS	58
Physical Repository	59
Virtual and Physical Data Room – A Comparison	59
Coding and Nomenclature	60
Circulation of Documents	63
Safety and Retrieval of Records	63
Preservation of Records	64
Setting Up of a Record Room	67
Privacy of Record and Its Control	68
Suggestive Steps for Protecting Confidential Information	69
The Data (Privacy and Protection) Bill, 2017	69
LESSON ROUND UP	70
SELF-TEST QUESTIONS	71

LESSON 4

SEARCH AND STATUS REPORT

Introduction	74
Purpose and Objective of Search and Status Report	74

Search and Status Report	75
Scope and Importance	75
Search of Charges Registered under Companies Act, 2013	76
Transaction requiring Charge Registration	77
Search Report under Companies Act, 2013	77
Search Report under IPR Laws	81
Property Title Search	82
Examination of Documents from Regulators Website	83
Inspection of Register of Charges	84
Verification of Documents	84
Compilation of Information	86
Format of Search Report	86
Search Report under SEBI, RBI, Stock Exchanges	88
Stock Exchanges Search Report	90
Model Trademark Search Report	94
Property Title Search Report	95
LESSON ROUND UP	96
SELF-TEST QUESTIONS	97

LESSON 5

KNOW YOUR CUSTOMER (KYC)

Introduction	100
Objectives of KYC	100
Meaning Of Customer under KYC	100
KYC Requirement in Various Transaction	100
Types of KYC	101
C-KYC	101
E-KYC	101
KYC of Directors by MCA	101
KYC of Companies	102
ICSI Guidelines on Know Your Members	103
Know Your Client (KYC) Norms for Company Secretary in Practice	103
Suggested Criteria to be adopted by Professional as KYC Norms	105
Risks upon Due KYC	105

Enhanced Due Diligence (EDD) in KYC	106
Characteristics of EDD	106
Customer Due Diligence in KYC	106
Regulatory Action on Violation of KYC Norms	107
Illustrative List of KYC Documents	110
KYC Documents for FPIs	112
LESSON ROUND UP	114
GLOSSARY	114
SELF-TEST QUESTIONS	114

LESSON 6

SIGNING AND CERTIFICATION

Concept of Pre-Certification	118
Historical Background	118
Various Certification by Company Secretary In Practice	119
Authentication of Documents	121
Points to be kept in mind with regard to Pre-Certification	121
Do's And Don'ts While Filling and Filing of E-Forms	122
Common Errors in E-Filing	122
Preparation before Certification	123
Register of Certification	123
Peer Review	124
Signing and Certification of Annual Return	125
Time and Mode of Appointment of Practicing Company Secretary	125
Scope and Extent of Work for Practicing Company Secretary	125
Method of Verification	125
Detailed Scrutiny of Annual Return	127
Certification with Reservation /Qualification /Observations /Adverse Remarks	128
Signing of Annual Return (MGT-7)	128
Certification of Annual Return (MGT-8)	129
Concept of different Professionals for Signing and Certification	130
Filing Annual Return in absence of Annual General Meeting	131
Corporate Governance Certification	131
Format of the Quarterly Reports	132

Obligations and Penal Provisions	137
Professional Misconduct	
Consequences of Non-Filing Annual Return	142
LESSON ROUND UP	143
LIST OF FURTHER READINGS	143
SELF-TEST QUESTIONS	144

LESSON 7

SEGMENT-WISE ROLE OF COMPANY SECRETARIES

Introduction	146
Company Secretary in Employment	146
Company Secretary in Practice	150
Overview of Various Industry	156
Banking Industry	157
Tourism and Hospitality	158
Telecommunication	159
Cement	160
Gems and Jewellery Industry	160
Automobile	161
Automobile Components	161
Aviation	161
Biotechnology	162
Chemicals	163
Construction	163
Defence Manufacturing	163
Electrical Machinery	164
Electronic Systems	164
Food Processing	164
It & Bpm	165
Leather	165
Media and Entertainment	165
Mining	167
Oil and Gas	168
Pharmaceuticals	169
National and International Developments	170

Role as A Guide	171
Role as A Regulator	171
Role as A Champion of Good Corporate Governance	171
Role in Investor Education and Protection	172
Role as A Global Leader	172
Role of Conscience Keeper	173
Role as Support to the Chairman	173
Role in Board and Committee Processes	173
Role in Board Development	173
Communication with Stakeholders	174
Disclosure and Reporting	174
LESSON ROUND UP	174
SELF-TEST QUESTIONS	174

LESSON 8

AUDITS

Overview and Introduction of Various Audits	178
Corporate Governance Audit	178
Corporate Social Responsibility (CSR) Audit	179
Insider Trading Audit	179
Labour Law Audit	180
Cyber Audit	180
Environment Audit	181
Forensic Audit	181
Social Audit	182
Takeover Audit	182
ICSI Auditing Standards – An Overview	183
Csas-1 Auditing Standard on Audit Engagement	184
Csas-2 Auditing Standard on Audit Process and Documentation	186
Csas-3 Auditing Standard on Forming of Opinion	188
Csas-4 Auditing Standard on Secretarial Audit	191
LESSON ROUND UP	193
SELF-TEST QUESTIONS	194

LESSON 9

SECRETARIAL AUDIT

Secretarial Audit	196
Need For Secretarial Audit	196
Secretarial Audit & Company Secretary in Practice (PCS)	196
Applicability of Secretarial Audit under Companies Act, 2013	197
Applicability of Secretarial Audit under SEBI (LODR) Regulations, 2015	197
Applicability of Section 204 to a company which is a subsidiary of a Public Company	198
Format of Secretarial Audit Report	199
Appointment of Secretarial Auditor	199
Benefits of a Secretarial Audit	199
Scope of Secretarial Audit	201
Secretarial Audit – The Process	202
Verification of Compliances	204
Professional Responsibility and Penalty for Incorrect Secretarial Audit Report	209
Guiding Criteria for Various Stages for Conducting Secretarial Audit	211
Guiding Principles of Good Corporate Conduct and Practices	228
LESSON ROUND UP	232
SELF-TEST QUESTIONS	233

LESSON 10

INTERNAL AUDIT AND PERFORMANCE AUDIT

Introduction	236
Definition of Internal Audit	236
Internal Audit under Companies Act, 2013	236
Appointment of Internal Auditor	237
Terms of Reference	238
Objective of Internal Audit	238
Scope of Internal Audit	239
Internal Audit Core Principles	241
Independence of Internal Auditor	241
Internal Audit Techniques	242
Internal Audit Process: Step Wise Approach	243

Evaluation of Internal Audit Function by an Auditor	243
Role of Internal Audit in Organization Control Mechanism	244
Appraisal of Management Decisions	246
LESSON ROUND UP	247
SELF-TEST QUESTIONS	247

LESSON 11

CONCEPTS AND PRINCIPLES OF OTHER AUDITS

Introduction to Various Audit	250
Corporate Governance Audit	250
Corporate Governance Due Diligence – Coverage	254
Corporate Social Responsibility (CSR) Audit	256
Takeover Audit	260
Insider Trading Audit	261
Industrial and Labour Law Audit	263
Cyber Audit	271
Checklist on Environment Audit	275
Information Systems Audit	277
Forensic Audit	279
Social Audit	284
LESSON ROUNDUP	286
SELF-TEST QUESTIONS	287

LESSON 12

AUDIT ENGAGEMENT

Meaning of Audit Engagement	290
Appointing Authority	290
Communication to Previous Auditor	291
Terms and Conditions of Audit Engagement	291
Audit Fee & Expenses	292
Independence and Conflict Of Interest	292
Confidentiality	294
Preconditions of Accepting/Continuing Any Professional Engagement	294

Limitation on Scope Prior To Engagement Acceptance	294
Other Factors Affecting Engagement Acceptance	295
Agreement on Engagement Terms	295
Criteria for Declining and Withdrawing from an Engagement	295
Limits on Audit Engagements	295
Audit Engagement Letter	296
Form and Content of Audit Engagement Letter	296
Model Audit Engagement Letter	297
Model Engagement Agreement	299
LESSON ROUND UP	301
SELF-TEST QUESTIONS	301

LESSON 13

AUDIT PRINCIPLES AND TECHNIQUES

Introduction	304
Auditing Techniques	304
Audit Planning	306
Essentials of Audit Planning	307
Risk Assessment	307
Collection of Information/Records of Auditee	308
Preparation of Audit Checklist	308
Selection of Audit Techniques	309
Gathering and Evaluating Evidence	309
Sampling	311
Compliance Test of Internal Control System	311
Substantive Checking	311
Dependence on Other Expert	312
External Experts' Opinion	312
Reference of Expert's Opinion in Audit Report	313
External Confirmation	313
Results of External Confirmation & Reliability of Response	313
Collection of Audit Evidences	314
Creation of Audit Trails	314

Materiality	315
Record Keeping	316
LESSON ROUND UP	317
SELF-TEST QUESTIONS	317

LESSON 14

AUDIT PROCESS AND DOCUMENTATION

Overview of the Audit Process	320
Preliminary Preparation	321
Questionnaire	322
Interaction through Interviews	322
Audit Programme	323
Identification of Applicable Laws	324
Creation of Master Checklist	325
Working Papers and Maintenance of Work Sheet	327
Working Papers	327
Scanned Documents as Working Papers	328
Tick Marks	328
Cross Referencing	328
Standard Working Papers	329
Types of Working Papers	329
Audit Trail	330
Working Paper Review	330
Filing and Protection of Working Papers	331
Retention Policy	331
Identification of the Event and Corporate Actions	331
Identification of events having bearing on Affairs of the Company	333
Board Composition	334
Board Processes	335
LESSON ROUND UP	336
SELF -TEST QUESTIONS	336

LESSON 15

FORMING AN OPINION AND REPORTING

Introduction to Process of Forming an Opinion	338
Forms of Opinion	338
Unqualified / Unmodified Opinion	338
Modified Opinion	339
Emphasis of Matter	340
Materiality	340
Third Party Report or Opinion	341
Management Representation Letter	341
Opinion Obtained By Management	344
Exit Conference	344
Evaluation of Audit Evidence and Forming Opinion	344
Sharing Draft Report with Management	345
Auditor's Responsibility	346
Format of Report	346
Limitation	346
Pre Requisite for the Reporting:	347
Submission of Audit Report	347
Signing of Audit Report	347
Reporting with Qualification	347
LESSON ROUND UP	348
SELF-TEST QUESTIONS	348

LESSON 16

SECRETARIAL AUDIT – FRAUD DETECTION AND REPORTING

Introduction	350
Types of Fraud	350
Duty to Report Fraud	351
Duty of Report Fraud to Central Government	351
Duty of Report Fraud to Audit Committee/ Board	351
Disclosures in the Board's Report	351
Consequence on Failure in Reporting of Fraud	351

Procedure for Reporting of Fraud	351
Fraud Detection and Reporting Requires the Practicing Company Secretary to Focus Beyond Compliance	352
Transaction which may involve the Fraud	354
Reporting of Fraud already reported by the Management	354
Reporting of Fraud by Secretarial Auditor already reported by Other Auditors	354
Fraud V/S Non Compliance	354
Speculation	355
Suspicion	355
Detection of Fraud	356
Professional Responsibility and Penalty for Incorrect Audit Report	356
Early Warning Signals of Frauds Detections	357
Investigation of Fraud by SFIO	358
Manner of discharging functions of SFIO	359
LESSON ROUND UP	360
SELF-TEST QUESTIONS	360

LESSON 17

QUALITY REVIEW

Peer Review - Definition	362
Peer Review for Company Secretaries	362
Rationale of Peer Review	362
Objectives of Peer Review	363
Benefits of Peer Review	363
Scope of Peer Review	363
Qualifications for Peer Reviewer	364
The Reviewer's Approach	364
Expected Qualities of Reviewer	364
Peer Review Process	365
Applicability of the Guidelines on Peer Review	365
Empanelment of Peer Reviewers	368
Statement of Confidentiality	368
Methodology to be followed by Reviewer	368
Compliance with Peer Review Guidelines	368
Cost of Peer Review	369

Obligations of the Practice Unit (PU)	369
Periodicity of Peer Review	369
Review Framework	369
Reporting	370
Questionnaire for Practice Units	370
Review Process	370
Reporting	373
Office Systems and Procedures	374
Quality Review Board	375
Guidance Manual on Quality of Audit and Attestation Service	376
Quality Assurance Includes Guideline for Practice and Prevention	377
Quality Control Includes Strategy of Detection and Improvement	377
ICSI Guidance Manual on Quality Management Systems	377
Quality Control Elements within the Firm	377
LESSON ROUND UP	386
SELF -TEST QUESTIONS	386

LESSON 18

VALUES, ETHICS AND PROFESSIONAL CONDUCT

Introduction	388
Types/Branches of Ethics	388
Key differences between Ethics and Values	389
Ethical Practices	389
Professional Ethics	390
Model Ethical Principles for Company Secretaries	390
Fundamental Duties of Professional	394
Ethical Dilemma	397
Common Causes of Loss of Ethics and Values	397
Strategy for Overcoming from the Evils	399
Recent Cases on Values, Ethics and Professional Conduct	400
LESSON ROUND UP	405
SELF -TEST QUESTIONS	405

LESSON 19

DUE DILIGENCE – I

Overview of Due Diligence	408
Need For Due Diligence	408
Objectives of Due Diligence	408
Scope of Due Diligence	410
Factors to be kept in mind while conducting Due Diligence	411
Stages / Process of Due Diligence	412
Techniques Of Due Diligence and Risk Assessment	414
Types of Due Diligence	415
Operational Due Diligence	415
Financial Due Diligence	415
Illustrative Scope of Work under Financial Due Diligence	416
Technical Due Diligence	417
Intellectual Property Due Diligence	417
Technology Due Diligence	418
Environmental Due Diligence	418
Human Resource Due Diligence	418
Labour Laws Due Diligence	419
Information Security Due Diligence	419
Legal Due Diligence	420
Due Diligence of Competition Law	420
Ethical Due Diligence	421
Due Diligence for Merger & Amalgamation	421
Due Diligence Process in the M&A Strategy	422
Preparation of Scheme of Amalgamation	422
Due Diligence for Take Overs	425
Due Diligence for Issue of Securities	430
Due Diligence Report for Bank	431
Guidance on Diligence Reporting	433
Period of Reporting	433
Right to Access Records and Methodology for Diligence Reporting	433
Reporting With Qualification	434

Professional Responsibility and Penalty for False Diligence Report	434
FEMA Due Diligence	435
FCRA Due Diligence	435
Due Diligence & Reporting Requirements	436
Non-Disclosure Agreement (NDA)	436
Content of the Non-Disclosure Agreements	437
LESSON ROUND UP	440
SELF-TEST QUESTIONS	441

LESSON 20

DUE DILIGENCE – II

Introduction	444
Prosecutorial Procedures	444
Non Compliances under Companies Act, 2013	444
Process of Prosecution under Companies Act, 2013	445
Dealing with Complaint by Roc and SFIO in Special Court	446
Difference between Fine and Penalty	447
Compounding	447
Compounding of certain Offences under Companies Act, 2013	448
Effects of Compounding	448
Enforcement Mechanism of SEBI	449
Consent Order under SEBI Laws	449
Highlights of SEBI (Settlement Proceedings) Regulations, 2018	451
Adjudication at SEBI	453
Punishment for Non-Compliances under SEBI Act, 1992	454
Penalties and Adjudication under SEBI Act, 1992	455
Non-Compliance under LODR Regulations	459
Action to be taken in case of Non-Compliances	459
Standard Operating Procedure (SOP)	462
Contravention and Compounding under FEMA Regulations	464
Application for Compounding	464
Timelines for application for Compounding	464
Documents for Application for Compounding	464
Compounding of Contraventions under FEMA Regulations	465

Proceession of Compounding Application	466
Technical, Material or Sensitive Contravention	466
Personal Hearing	467
Manner of Reporting of Non-Compliance	467
Section Wise Offence and Consequences thereof	468
LESSON ROUND UP	486
SELF-TEST QUESTIONS	486
Test Papers	489
Bibliography	492

Lesson 1

Compliance Framework

LESSON OUTLINE

- Introduction
- Corporate Compliance Framework
- Preparation of Compliance Chart
- Content of Compliance Chart
- Role of Company Secretary in Creation of Compliance Chart
- Compliance Risk– Review and Updation
- Training and Implementation
- Compliance Audit
- Secretarial Audit and Compliance Management System
- Role of Company Secretaries in Compliance Management
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Timely examination of compliance reduces risks as well as potential cost of non-compliance and also builds better corporate image. A compliance framework is a system designed to assist an organisation to meet its obligations and to reduce the risk of the organization of non-compliance. A systematic compliance framework establishes better compliance platform by timely compliances with the provisions of various statutes, laws, rules & regulations, procedures.

After reading this lesson, the students would be able to understand the importance of the compliance framework in an organization and Role of the Management and the compliance officer/ company secretary of the company.

INTRODUCTION

Compliance with law and regulations must be managed as an integral part of any corporate strategy. The board of directors and management must recognize the scope and implications of laws and regulations that apply to the company. They must establish a compliance management system as a supporting system of risk management system as it reduces compliance risk to a great extent. To ensure an effective approach to compliance, the participation of senior management in the development and maintenance of a compliance program is necessary. They should review the effectiveness of its compliance management system at periodic intervals, so as to ensure that it remains updated and relevant in terms of modifications/ changes in regulatory regime including acts, rules, regulations etc. and business environment.

A compliance management system manages the entire compliance process of the company. It includes the compliance program, compliance audit, compliance reporting etc. The compliance program consists of the policies and procedures which guide in adherence of the applicable laws and regulations on the company. Whereas the compliance audit is an independent testing of level of compliance with applicable laws and regulations on an Organisation.

Corporate compliance management involves a full process of research and analysis as well as investigation and evaluation. Such an exercise is undertaken in order to determine the potential issues and get a realistic view about how the entity is performing and how it is likely to perform in the future. Company Secretaries with core competence in compliance and corporate governance play a crucial role in the corporate compliance management.

CORPORATE COMPLIANCE FRAMEWORK

The Corporate compliance framework consists of three key components: the **Compliance Chart, Compliance Advisory and Compliance Scorecard**. The Compliance Chart is a vital part of the framework. The Chart provides an overview of the relevant local, state, central and international laws, regulations and standards relating to a business' operations. The compliance chart also outlines how compliance risk mitigation activities are embedded in business processes. In other words, how compliance with the laws, regulations and standards is embedded and ensured, the compliance chart help to a business in meeting its compliance obligations towards the customers, regulators, shareholders and employees because it provides a centralize compliance information of the company on a single chart. The compliance chart also reflects the key activities and compliance calendar which is to be followed and performed by a business unit to manage its compliance risks.

A well-designed compliance framework has abilities to perform the following key functions across the every type of business organisations:

Compliance Dashboard: The compliance programme must provide a single enterprise-wide dashboard for all users to track and trend compliance events. All compliance events should be easily viewed interactively through the enterprise compliance dashboard. External auditors, internal auditors, compliance officers can use the dashboards to make decisions on the compliance status of the organization.

Compliance Policy and Procedure: A well-designed document management system forms the basis of managing the entire lifecycle of policies and procedures within an enterprise. Ensuring that these policies and procedures are in conformity with the ever-changing rules and regulations is a critical requirement. The creation, review, approval and release process of the policy documents and SOPs (Standard Operating Procedures) should be driven by collaborative tools that provide core document management functionality.

Access to Rules and Regulations: A well-designed compliance management solution must offer capabilities for organization to continuously stay in sync with changing rules and regulations. As soon as there are regulatory changes, the various departments should be notified proactively through "email based" collaboration. This process critically enables the organization to dynamically change their policies and procedures in adherence to the rules and regulations. While tracking a single regulation may be manually

feasible, it becomes an error-prone task to track all local, state, and central regulations including those taking place across the globe. A well-designed Compliance management programme offers up-to-date regulatory alerts across the enterprise.

Compliance Audit: Audits have now become part of the enterprise core infrastructure. Internal audits, financial audits, external audits, vendor audits must be facilitated through a real-time system. Audits are no more an annual activity and corporations offer appropriate audit capabilities. Appropriate evidence of internal audits becomes critical in defending compliance to regulations.

Quality Management: Most organizations have internal operational, plant-level or departmental quality initiatives to industry mandates like Six-sigma or ISO 9000. A well-designed compliance management program incorporates and supports ongoing quality initiatives. Most quality practitioners agree that compliance and quality are two sides of the same coin. Therefore, it is critical to ensure that compliance management solution offers support for enterprise-wide quality initiatives.

Compliance Training: Most compliance programs often require evidence of employee training. Sometimes lack of knowledge and incomplete procedure lead to fines and penalties to the director and officers of the company. The compliance office has to work closely with the legal team of the organization to facilitate employee training. Well-designed compliance program requires a well-integrated approach to training management.

Compliance Task Management: The company must create plan to manage and report status of all compliance related activities from a centralized data base. Automated updates from the various compliance modules should provide for up-to-the-minute status reporting that could be viewed by the Board, compliance officer, entity compliance coordinators, quality offices and others as designated.

Accordingly, for creating a Compliance Management Framework an organization need to perform activities relating to the Compliance Identification, Compliance Ownership, Compliance Awareness, Compliance Reporting and Periodical Compliance MIS for the company. These activities are covered in the various part of this chapter. However to Summaries the compliance framework consists of the following:

Process for Setting up of Compliance Framework					
Stage-1	Stage-2	Stage-3	Stage-4	Stage-5	Stage-6
Identification of Compliance Obligations	Preparation of Compliance Chart	Historical Compliance Assessment	Assessment of Historical Compliance Audit	Assessment of Compliance Risk	Compliance/ Action Reporting
Applicability of the various Act, Rules, Regulations, Policies and Procedures covering Industry Specific Sector Specific, Specific Activity, Specific Entity, Specific State Law, Local Laws	Setting up Role and Responsibilities of Top Management, Legal Department, Senior Management and Compliance executor	Assessment of Internal File/Internal Report/Return Statements	Assessment of File/Report/Return Statements/ Internal Auditor/ Independent agency/Regulator	Identification of possible situations of Non-compliance/ In adequate Compliance and development of strategy for Risk Mitigation/ Risk Monitoring/ Risk Reporting	Report of Internal Auditor/ Independent agency/Regulator with the possible consequence such as disqualification/ Suspension/lock out/License Cancellation

PREPARATION OF COMPLIANCE CHART

As referred in the introduction that the corporate compliance framework consists of three key components: the Compliance Chart, Compliance Advisory and Compliance Scorecard and the Compliance Chart is a vital part of the Framework, the company should give more focus on the preparation of the compliance chart. The compliance chart of the company is prepared after considering the operations and the structure of the company as the compliance requirement for an organization is based on the type of company, activity of the company, Industry, Sector in which the company operates and laws which are specifically applicable to the company.

Broadly, the compliance chart is prepared by considering the following activities:

- Identification of compliances under applicable Laws, Rules and Regulations
- Risk Assessment
- Risk Mitigation (includes Training and Education)
- Compliance Monitoring (includes Action Tracking)
- Compliance Reporting (includes Incident Management)

Traditionally, the compliance chart are designed in a different era and with a different purpose keeping in mind, which largely known as an enforcement arm for the legal function of the company. Such compliance chart left companies at their own to devices or figure out the specific controls required to address regulatory requirements, which lead to a buildup of labor-intensive control activities with uncertain effectiveness. The role of company secretaries as a compliance manager in a company is now extended to create a compliance framework for translating the regulatory requirements into management actions of the company.

CONTENT OF COMPLIANCE CHART

The Compliance Chart of any company must contain the complete information on compliance dashboard, which provide a detailed compliance procedure to the compliance executor, this information includes:

1. Reference to the key compliance-related laws, regulations, industry standards and compliance-related policies and standards of the company;
2. Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
3. Inherent and managed risk level (critical, high, medium, low) of the identified obligations;
4. The business processes or people to which the compliance obligations are linked or on which they have an impact;
5. Specific compliance risk mitigation activities and compliance risk tracking and monitoring for managing the compliance obligations;
6. To whom and how frequently compliance-related results and findings are reported;
7. Clear ownership of the processes, activities and obligations outlined in the chart.

Such compliance chart must be practical and concise as possible on the role and responsibilities of the management and of the compliance officer who is specifically linked to existing and newly identified business activities.

ROLE OF COMPANY SECRETARY IN CREATION OF COMPLIANCE CHART

As the one of the core function of the company secretary is to formation of the compliance framework in association with the other functional heads of the company. Although the actual process of compiling the

information under the various laws may vary from company to company and is dependent on various factors such as the number of units and scale of operations, a brief process for preparation of the compliance chart is underlines as follows:

1. Identification of applicable law, rules and regulations

The compliance identification involves the identification of compliances requirement under various laws applicable to the company, in consultation with the functional heads. The legal team of the company guides the functional heads in identification of the laws applicable to the company and to identify the compliances that are required under each law, rules and regulations applicable on the company. For preparation of such compliance framework by a company secretary and to identify the compliances & other requirements, it is necessary form him to get familiar with the business model of the company along with the environmental, health and safety aspects, and data security requirements. Further, a periodically review the compliance requirements in the light of the regulatory updates is also necessary for the effective compliance management.

In India, the corporate compliance management broadly include compliance of the laws which are applicable on the company, this include the Corporate Laws, Securities Laws, Commercial Laws including Intellectual Property Rights Laws, Labour Laws, Tax Laws, Pollution Control Laws, Industry Specified laws, other Laws which affecting the company concerned depending upon the type of industry/activity.

The compliance chart covering above applicable laws must be kept up to date and should also reflect the compliance obligations and associated risks that arise. Such obligations may be based on company compliance policies and / or international and local laws, regulations and standards that apply to a business' activities. As a good practice the company should communicate to the compliance executor that what it should or should not do for performing any compliance requirement.

In case where there is a policy issued by a company, research must be conducted to identify whether additional or different local exist. If a conflict between policies issued by company, local law and/or international law arises, the conflict must be resolved and the appropriate obligation must be identified. Where the obligations of local laws or regulations impose greater or more stringent requirements than those included in a policy issued by company (or if the opposite situation exists), the more stringent obligations shall prevail.

2. Risk Assessment

The compliance chart of the company oversees and objectively challenges execution, management, control and reporting of risk, however the management of the company has ultimate accountability for the effective control of risks affecting their business and the management should take ownership and responsibility for execution of risk assessments.

Risk assessments should be performed according to the changes in the business' profile. Such changes may result because of new laws or regulations, new interpretations of existing laws or regulations, new theories of liability, a new activity of the business or changing social standards.

In the risk assessment process, the company identifies the inherent risk of each obligation as critical, high, medium or low. The outcome determines the type of risk mitigation strategy. However, the systems and procedure at the first line tracking and second line monitoring needed to effectively utilize to manage the risk. Thereafter the business assesses its managed risk levels for the identified compliance obligations.

There are two types of risk assessments that can be performed by the company, these risk assessment are known as high level risk assessment and detailed risk assessments.

In the high level risk assessment, the risk identification procedures and its assessment and the detailed risk assessment results are required as inputs for high level risk assessment which are facilitated by representatives of Risk Management team. The current and anticipated critical and high Compliance Risks must be included in

6 PP-SACM&DD

the high level risk assessment process. The outcome of the risk assessment is the high level risk assessment report. Reports from the detailed and high level risk assessments must include key Compliance Risks, with existing and approved risk mitigation activities. Assessment Reports must be discussed and signed off in accordance with the risk management procedure of the company. Risk assessment techniques can be a combination of desk assessments, interviews and/or workshops; however they should be aligned with risk management standards of the company.

To ensure that risk is properly assessed and mitigated, a detailed risk assessment should be undertaken, particularly when further input is needed from support functions (i.e. outside experts) and/or to manage certain current and anticipated critical and high risk areas.

3. Compliance Risk Mitigation

Compliance risk mitigation is the process of developing and implementing controls such as standards, policies, procedures and guidelines to prevent or minimise risks arising from compliance obligations. From time to time, the company may issue a policy that must be implemented at the local level. If a corporate policy does not encompass local obligations of any unit of the company, a local policy to facilitate the effective management of the identified compliance risk must be developed. Framework components, policies and procedures must be developed and communicated and should be placed on the prominent places in the organization, so employees understand their obligations (e.g. how to make a whistleblower report, complaints handling process, gifts, entertainment and anti-bribery procedures, etc.

All documentation must be easily accessible to employees. Maintenance of the supporting material can be in the form of a manual, handbook or other physical or electronic means.

Various Risk of Non-compliance

The risks of non-compliance of the law are many which include the followings:

1. Cessation of business activities
2. Civil action by the authorities
3. Punitive action resulting in fines against the company/officials
4. Imprisonment of the errant officials
5. Public embarrassment
6. Damage to the reputation of the company and its employees
7. Attachment of bank accounts.

4. Compliance Monitoring - Ownership/ Allocation

The next important aspect of designing compliance framework is the compliance ownership. The ownership of the various compliances has to be described function wise and individual wise. Clear description of primary and secondary ownership is also very important. While the primary owner is mainly responsible for the compliance the secondary owner (usually the supervisor of the primary owner) has to supervise the compliance. Ex: Secretarial Officer /Asst. Company Secretary may be primarily responsible and Group Company Secretary's responsibility is secondary. The role of the various level of management for compliance ownership can be illustrated as under:

Top Management:

- Understanding the compliance obligations and recent changes
- Approval of policy and procedures

- Motivating employees to doing compliance in time

Legal Cell:

- Identification of new and changed relevant local laws, regulations and standards
- Communication in Writing to compliance owner/ executor
- Review of system and policies and Procedures
- Resolution of Doubts and Clarity in Directions
- Periodical Review and Assessment

Senior Management & Functional Heads:

- Analysis and research on the Regulatory changes
- Formation of Policy and procedure
- Motivating Compliance officer to Timely Compliance
- Guiding compliance officer in doing compliance
- Tracking the Compliance chart
- Risk Escalation
- Conflict Resolution

Compliance Officer / Subordinate Staff

- Performing Compliance Obligations
- Updating Compliance obligations into the Compliance Chart
- Risk Identification and intimation
- Conflict intimation.

The management of the company should develop and update the chart by clearly identifying the principle business activities and relevant processes affected by the obligation(s) and should identify the individuals having accountability for executing the activities outlined in the chart including those individuals with managerial responsibility. The management should formally approves the compliance chart and they should notify any changes in the policies, products, activities, strategy or governance structures of the company immediately.

5. Compliance Reporting

Compliances or non-compliances should be communicated to the concerned authority. Reporting of non-compliances ensures that appropriate corrective action is taken by the responsible person to reduce the compliance risk. For example, Automated escalation emails in case of non-compliance, Pop-ups for the Compliance Due dates etc. Although the actual process of compliance reporting under the various laws may vary from company to company and is dependent on various factors such as the number of units and scale of operations, a brief process of the Compliance reporting is as follows:

- A. Reporting by the functional heads for which they have the compliance ownership. For instance, the Chief Financial Officer (CFO) will report on the various finance, accounting and taxation laws, the head of the personnel department could report the compliance of labour and industrial laws.
- B. Each of the functional heads may collect and classify the relevant information from the various units/ locations pertaining to their department and consolidate them in the form of a report.

8 PP-SACM&DD

- C. The report shall carry an affirmation from the functional heads that the said report has been prepared based on the inputs received from the various units/offices and then list out the specific compliances/non-compliances, as already circulated to the functional heads.
- D. Each of the functional heads will forward their respective compliance reports to the company secretary/managing director.
- E. The company secretary would then brief the managing director and with suitable inputs from the Company Secretary, the Managing Director would consolidate and present, under his signature, a comprehensive compliance report to the Board for its information, advice and noting.
- F. The whole process of compliance reporting is contingent on the creation and implementation of comprehensive legal Management Information System (MIS).

Compliance reporting allows Management and the Compliance function to assess whether Compliance Risks exceed the risk appetite of Company. Compliance Reporting also allows for communication and discussion of potential Compliance Risks. Management and the Compliance officer is responsible for gathering information, and then analysing and communicating the results so that informed, timely decisions can be made. At least quarterly, reports should be discussed at the risk management committee meeting.

Broadly, there can be two primary types of reporting: Cyclical Reporting and Incident Reporting.

In Cyclical Reporting, at least quarterly basis, the Compliance officer works with Management and other risk functions to provide non-financial risk reporting. However the Management may require more frequent or other types of Compliance-Risk related reporting, whereas In Incident Reporting the material compliance incidents are reported, which need to be handled through the risk management process. Material compliance incidents are defined as events that have effect on the company's integrity, damaging company reputation, legal or regulatory sanctions, or financial loss, as a result of a failure (or perceived failure) to comply with applicable compliance related laws, regulations and standards.

Periodical Compliance MIS

Periodical compliance MIS is a type of reporting that occurs at a pre decided period, at least quarterly, if not monthly. This report contain the status of the various compliances need to be done by the company and any gap in the compliance and other incidents which are need to be reported to Board, Senior Management of the company.

COMPLIANCE RISK - REVIEW AND UPDATION

Compliance risk monitoring makes it possible for the business to test if its risk mitigation activities are working properly and to identify new or changed risks. The plan for monitoring must be documented and reviewed and, if necessary, updated annually and more frequently based on other Framework activities and monitoring results. The Compliance risk monitoring plan must include:

- Critical and high Compliance Risks, focusing on inherent and managed risk levels;
- Key Compliance Risk mitigation activities;
- Routine business transactions to which compliance obligations or risks are associated;
- The implementation /embedding of the Framework and all policies issued by the corporate compliance department;
- Compliance with the laws, regulations and standards included in the chart, including the company values; and
- The obligations that have been delegated to the compliance function (e.g. complaints handling, privacy related obligations).

The plan for monitoring must include:

1. Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
2. The business processes to which the compliance obligations are linked or on which they have an impact;
3. Specific Compliance Risk mitigation activities for managing the compliance obligations;
4. The first line tracking (ongoing tracking as part of the normal course of business activities), second line monitoring (health check performed by the Compliance Function) and third line assurance (independent review performed by internal audit) for efficiency and / or effectiveness of first and second line activities);
5. Brief description of how tracking and monitoring activities are performed;
6. Frequency of tracking and monitoring activities;
7. Recipient(s) of the tracking and monitoring reports.

The following methodology may be adopted for accessing the compliance mechanism of the company:

Risk/Cultural Assessment: Through employee surveys, interviews, and document reviews, a company's culture of ethics and compliance at all levels of the organization is validated. The basis of this assessment is to identify gaps between company's current practices and the regulatory requirements.

Program Design/Update: In this approach the review of the guideline documents that outline the reporting structure, communications methods, and other key components of the code of ethics and compliance program is accessed. This encompasses review of all aspects of the compliance program, from grass root policies to structuring board committees that oversee the program.

Policies and Procedures: In this approach of compliance assessment, the company should review, develop or enhance the detailed policies of the program, including issues of financial reporting, antitrust, conflicts of interest, gifts and entertainment, records accuracy and retention, employment, the environment, global business, fraud, political activities, securities, and sexual harassment etc.

Communication, Training, and Implementation: In this stage of Compliance assessment, the Company focuses on the articulation, communication and reinforcement of the various policies and procedure of the company along with the philosophy behind such policies. Further Training programme on such policies help in the adoption of such policies in day-to-day realities and helps in incorporate it into the attitudes and behaviors of the employees of the company.

Ongoing self-Assessment, Monitoring, and Reporting: The true test of a company's ethics and compliance program comes over time. How does one know in one year or five that both the intent and letter of the law are still being observed throughout organization? How does the program and the organization adapt to changing legislation and business conditions? As the organization evolves for example, through mergers and acquisitions will the program remain relevant? The cultural assessment, mechanisms, and processes put in place including employee surveys, internal controls, and monitoring and auditing programs, help organisations achieve sustained success.

The matrix below suggests a method of ranking risks as low, moderate, high or extreme

CONSEQUENCE LIKELIHOOD	LOW	MEDIUM	HIGH	VERY HIGH
	<p>A minor impact, which should be possible to be handled at the operational level. It could involve such things as:</p> <ul style="list-style-type: none"> • Minor delays in providing services or achieving performance targets • Minor reductions in system quality • Minor dissatisfaction of clients • Minor adverse financial impact • Minor breach of accountability requirements. 	<p>A moderate impact which could involve such things as:</p> <ul style="list-style-type: none"> • Significant delays in providing services or achieving key organisational objectives. • Limited dissatisfaction of clients. • Exposure to minor criticism and/or adverse publicity. • Minor damage to reputation. • Moderate adverse financial impact. • Moderate breach of accountability requirements. 	<p>A major impact which could involve such things as:</p> <ul style="list-style-type: none"> • Major delays in providing services or achieving key objectives. • Significant dissatisfaction of clients. • Exposure to significant criticism and moderate adverse publicity. • Moderate damage to reputation. • Significant adverse financial impact. Breaches of contractual or legislative obligations. • Major breach of accountability requirements. 	<p>An extreme impact: if the risk occurs, the organisation would not be able to effectively perform core activities. It could involve such things as:</p> <ul style="list-style-type: none"> • A critical business failure. • Extensive loss of clients. • Exposure to extensive criticism and adverse publicity. • Extensive damage to reputation. • A major adverse financial impact. • Extensive breaches of contractual or legislative obligations • Extensive breach of accountability requirements.
<p>VERY HIGH (almost certain) It is almost certain that the event or described result will occur</p>	MODERATE	HIGH	EXTREME	EXTREME
<p>HIGH (probable) There is a strong possibility that the event or described result will occur</p>	LOW	MODERATE	HIGH	EXTREME
<p>MEDIUM (could happen) While it is not certain, the event or described result could occur.</p>	LOW	MODERATE	HIGH	HIGH

LOW (unlikely) While it is still possible, it is unlikely that the event or described result will occur	LOW	LOW	MODERATE	HIGH
--	-----	-----	----------	------

TRAINING AND IMPLEMENTATION

In Compliance framework, it is most important to create awareness of the various Compliances requirements amongst the individuals responsible for such compliances. Many a times compliances are handled by persons who are not fully aware of the requirements of the law and hence creating appropriate awareness amongst the owners is very important. This could be done in the form of meetings/trainings/ Communications explaining the various compliances or some manual containing the details of compliances.

A strong Compliance training and education programme reinforces Company compliance culture. It builds awareness and understanding of Compliance standards, procedures, guidelines and issues. Specifically, it should build awareness and understanding of:

- Company Framework, including the four conduct-related integrity risk areas;
- Roles and responsibilities outlined in the policies and Framework;
- Critical and high compliance obligations identified in the Compliance Chart;
- The process for addressing compliance issues and reporting concerns and
- Consequences of failing to meet compliance obligations.

An annual plan for Compliance Risk related training and education must be developed and updated, as necessary, and should indicate the target audience and training delivery method. Compliance Risk related training programme should, to the extent possible, be integrated into the training plans.

The plans for compliance training and education programme must include:

1. Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
2. The business processes to which the compliance obligations are linked or on which they have an impact;
3. Brief description of the training or education activity;
4. Target audience (refresher for existing Employees, induction for new Employees, or Adhoc when required);
5. Frequency of training or education activity.

COMPLIANCE AUDIT

Compliance audits may be planned, performed and reported separately to the Board, senior management or Regulators, the compliance audit is completely different from the audit of financial statements and from performance audits. The compliance audits may be conducted separately on a regular basis, as distinct and clearly-defined audits each related to a specific subject matter.

As per CAG Auditing Standards, The Compliance audit is the independent assessment of whether a given

12 PP-SACM&DD

subject matter is in compliance with applicable authorities identified as criteria. Compliance audits are carried out by assessing whether activities, financial transactions and information comply in all material respects, with the authorities who govern the audited entity. Compliance auditing may be concerned with

- **Regulatory** - adherence of the subject matter to the formal criteria emanating from relevant laws, regulations and agreements applicable to the entity
- **Propriety** - observance of the general principles governing sound financial management and the ethical conduct of public officials.

SIGNIFICANCE OF CORPORATE COMPLIANCE MANAGEMENT

Compliance with the requirements of law through a compliance management programme can produce positive results at several levels:

- Companies that go the extra mile with their compliance programs lay the foundation for the control environment.
- Companies with effective compliance management programme are more likely to avoid stiff personal penalties, both monetary and imprisonment.
- Companies that embed positive ethics and effective compliance management programme deep within their culture often enjoy healthy returns through employee and customer loyalty and public respect for their brand, both of which can translate into stronger market capitalization and shareholder returns.
- Safety valve against unintended non compliances/ prosecutions, etc.
- Cost savings by avoiding penalties/fines and minimizing litigation
- Better brand image and positioning of the company in the market
- Enhanced credibility/creditworthiness that only a law abiding company can command
- Goodwill among the shareholders, investors, and stakeholders.
- Recognition as Good corporate citizen.

Clearly, the benefits of implementing and maintaining an effective ethics and compliance program far outweigh its costs. Not only does the compliance management protect investor's wealth but also helps the business in running successfully with any potential risk being addressed in a timely and accurate manner.

APPARENT, ADEQUATE AND ABSOLUTE COMPLIANCES

Corporates are expected to comply with the regulatory prescriptions in their true letter and spirit and should be seen as an opportunity to make their systems and processes more robust and bring them in line with global practice, resulting in the enhanced trust level of stakeholders. As regards corporate disclosure, there has been a paradigm shift from letter to spirit because of factors like demand from stakeholders, regulatory shift from control to self regulation, market competition etc.

Good Corporate Governance demands compliances level that match the intentions of legislature, expectations of stakeholders and requirements of regulators. The compliances, however, generally found to fall in three categories, i.e. Apparent Compliances, Adequate Compliances and Absolute Compliances.

Apparent compliance is a disguise form of non-compliance, which is worse than a non compliance. The classic example for Apparent Compliances are generating documents such as notice, agenda, minutes on papers for board and general meeting which are not actually held.

Adequate compliance is compliance in letters. The aspects specified in law are complied in letters, without getting into the spirit of the law, e.g. box ticking practices.

Absolute compliances are those which are in line with the spirit and intent of the law. A typical example in this regard is demonstrating shareholder democracy as prescribed by law. When a company complies with law in spirit it gains public confidence as well. For example, Infosys has set new and effective standards in communicating with shareholders, stock exchanges and general public at large. Its Annual Report is said to be a trend setter and has been commended as an ideal report. The company has demonstrated through its practices and procedures its commitment to enhance investor-relations and has amply rewarded its shareholders through its impressive performance and its value based management philosophy helps increase its brand value. The company has achieved trust of stakeholders by having a strategic balance between wealth and welfare.

Experts view Annual report as self appraisal report of the company. The shift from shareholder concept to stakeholder concept has necessitated the corporates to provide a transparent report which is viewed by all stakeholders such as shareholders, creditors, lenders, strategic investors etc as a potential source of information. In order to attain corporate sustainability and to ensure a level playing field with international market, corporates has to necessarily increase their level of compliance from apparent to adequate leading to level of absolute, compliances.

SECRETARIAL AUDIT AND COMPLIANCE MANAGEMENT SYSTEM

The compliance system and processes in a company are dependent mainly on the following factors:

- A. Nature of business (es).
- B. Geographical domain of its area of operation(s).
- C. Size of the company both in terms of operations as well as investments, technology, multiplicity of business activities and manpower employed.
- D. Jurisdictions in which it operates.
- E. Whether the company is a listed company or not.
- F. Regulatory authority (ies) in respect of its business operations.
- G. Nature of the company viz., private, public, government company, etc.

Based on the above the Secretarial Auditor can constitute a broad idea about the desired system and process to be adopted by a company. For example, a multi product / multi operation company is supposed to comply all the applicable corporate laws in addition to regulatory framework applicable at products/ operations.

At corporate level, monitoring of such complex web of compliances are generally made on a back-to-back mechanism. In such cases Boards' reporting on compliances are made on the basis of reports/certification provided by field level management. As a better compliance structure in such cases it is desired to have an internal checking mechanism about the quality of such report either on regular basis or sample basis.

Now-a-days most of the large companies have adopted Enterprise Resource Planning (ERP) Systems to cater to their complex operations. In many a cases, compliance system becomes a part of these modules.

Auditing in such systems requires the Auditor to enter and to have access within the system. While taking up the audit assignment, the Auditor needs to ensure that access would be given so that assessment of proper system and process of compliance is made.

Auditing of compliance system and process is not a fault finding exercise, rather a device to scale up compliance mechanism of a company commensurate to its size and operations. It is desired that the Secretarial Auditor as an expert in corporate compliance would advice the companies to build up strong corporate compliance system in case the system appears to be insufficient during the audit process.

ROLE OF COMPANY SECRETARIES IN COMPLIANCE MANAGEMENT

Corporate Compliance Management can add substantial business value only if compliance is done with due diligence. A Company Secretary is the 'Compliance Manager' of the company. It is he who ensures that the company is in total compliance with all regulatory provisions. Corporate disclosures, which play a vital role in enhancing corporate valuation, is the forte of a Company Secretary. These disclosures can be classified into statutory disclosures, non-statutory disclosures, specifies disclosures and continuous disclosures. SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 spells out elaborately on various aspects of disclosures which are to be made by the company such as contingent liabilities, related party transactions, proceeds from initial public offerings, remuneration of directors and various details giving the threats, risks and opportunities under management discussion and analysis in the corporate governance report which is published in the annual accounts duly certified by the professional like company secretaries. A company secretary has to ensure that these disclosures are made to shareholders and other stakeholders in true letter and spirit.

The advisory services of the company secretaries impacts to all components and activities of the compliance framework, as the business receives one point specialized support and advice to help manage its compliance risks more effectively. The company secretary play a proactive advisory role as he advise management, local boards and committees, the compliance executor, and the employees. The company secretary provide advice on compliance risk, responsibilities, obligations, concerns and other compliance issues that are suitable for the business' practices and operational constraints of the company.

In nutshell, the company secretary is the professional who guides the board and the company in all matters, renders advice in terms of compliance and ensures that the board procedures are duly followed, best global practices are brought in and the organisation is taken forward towards good corporate citizenship.

LESSON ROUND UP

- Corporate compliance management involves a full process of research and analysis as well as investigation and evaluation.
- The role of company secretaries in a company is to create such framework which can translate the regulatory requirements into management actions of the company.
- The compliances requirement under various laws applicable to the company should be prepared in consultation with the respective functional heads.
- The risk monitoring plan must include critical and high compliance risks and should focus on inherent and managed risk levels.
- The material compliance incidents are the events having effect on the company's integrity, damaging company reputation, legal or regulatory sanctions, or financial loss, as a result of a failure (or perceived failure) to comply with applicable compliance related laws, regulations and standards.
- The compliance audit is the independent assessment of whether a given subject matter is in compliance with applicable laws and criteria defined by the authorities.

SELF -TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Define the point which should be kept in mind while developing a compliance framework.
2. Describe the importance of the compliance chart in the managing compliances of the company.
3. "A strong compliance training and education programme reinforces Company compliance culture" Comment.
4. Discuss the methodology which can be adopted for accessing the compliance mechanism of the company.

[illegible]

Lesson 2

Compliances

LESSON OUTLINE

- Introduction
- Need for Compliance Management
- Benefit of Corporate Compliance Management
- Scope of Corporate Compliance
- Establishment of Compliance Management Framework
- Process of Corporate Compliance Reporting
- Entity wise Compliances
- Activity wise Compliances
- Sector wise Compliances
- Industry Specific Compliances
- State and Local Laws Compliances
- Compliance under Companies Act, 2013
 - Private Company
 - Small Company
 - One Person Company
 - Limited Liability Partnership
 - Section 8 Company
- Register, Returns and Books
- Compliances under SEBI (LODR) Regulations, 2015
- Website disclosures and New Paper Advertisement
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Expansion in terms of geographies and functions, has necessitated the corporates to comply with multiple regulations. It requires systematic approach and co-ordination among functional departments, to avoid any material non-compliance. Nevertheless, some corporates perceive legal compliance, substantive and procedural, as mundane activity involving costs and fail to realize the cost of non-compliance that may have an irreversible negative impact on the reputation of business. This has emerged a need to create proper systems, processes, tools and dynamic corporate compliance management systems in the corporates.

After reading this lesson the student will be able to understand the importance, need of compliance management, process involved, and systems approach to compliance management. Further the lesson also deals with apparent, adequate and absolute compliances.

INTRODUCTION

Compliance management is the method by which corporate manage the entire compliance process. It includes the compliance program, compliance audit, compliance report etc. and in other words it is called compliance solution. Compliance management together with the Secretarial Audit is the routine tools for effective governance. Compliance management is to be built into the corporate system to avoid non compliances and the secretarial audit is carried out on periodical basis by an independent professional to check the effectiveness of the controls within the organization and report that how the organization is complying with the statutory requirements. Company Secretaries plays a vital role and hold the responsibility for the compliance being the compliance officer and KMP of the entity.

Corporate compliance management involves a full process of research and analysis as well as investigation and evaluation. Such an exercise is undertaken in order to determine the potential issues and get a realistic view about how the entity is performing and how it is likely to perform in the future. Company Secretaries with core competence in compliance and corporate governance play a crucial role in the corporate compliance management in an organisation.

Need for Compliance Management

Every company needs to follow laws and regulations enacted by central and state governments or such other regulator. Corporate compliance is an ongoing process, and businesses especially ones that have incorporated under any statute need to make sure that they're following the rules set in place. In every organization top executive plays a significant role in complying with multiple rules and regulations under different laws. Many companies are adopting comprehensive compliance plans to address emerging regulatory paradigm and those fail to address the new regulations, pay huge fines or incurring punitive restrictions on their operations. Increased liability and regulatory oversight has amplified risk to appoint where it demands continuous evaluation of compliance management systems.

Onerous responsibility to guide to the management for comply with the relevant laws casts upon the Company Secretaries. They have to advise companies in totality to provide full, timely and intelligible information. To enable companies to put in place an effective Compliance Management System, company secretaries should ensure that companies:

- Adhere to necessary industry and government regulations.
- Change business processes according to legislative change.
- Realign resources to meet compliance deadlines.
- React quickly and cost-effectively if regulations change.

Benefits of Corporate Compliance Management

- Better compliance of the law.
- Real time status of legal/statutory compliances.
- Safety valve against unintended non compliances/prosecutions etc.
- Real time status on the progress of pending litigation before the judicial/quasi-judicial authority.
- Cost saving by avoiding penalties/fines and minimizing litigation.
- Better brand image and positioning of the company in the market.
- Enhanced credibility/creditworthiness that only a law abiding company can command.

- Goodwill among the shareholders, investors, and stakeholders.
- Recognition as Good corporate citizen.

Scope of Corporate Compliance

Corporate compliance management broadly include compliance of:

- Corporate & Economic Laws
- Securities Laws
- Commercial Laws including Intellectual Property Rights Laws
- Labour Laws
- Tax Laws
- Cyber Law which is also known as The Information Technology Laws
- Pollution Control Laws
- Industry Specified Laws
- All other laws affecting the company concerned depending upon the type of industry/activity.

Corporate & Economic Laws

Corporate laws are core competence areas of a company secretary and corporate compliance management broadly requires complete compliance of these laws. Some of the important corporate laws are given below in brief:

- Companies Act, 2013 and the Rules and Regulations framed thereunder, MCA-21 requirements and procedures.
- Secretarial Standards /Accounting Standards/Cost Accounting Standards issued by ICSI/ ICAI/ ICMAI, respectively.
- Emblems and Names (Prevention of Improper Use) Act, 1947.
- Foreign Exchange Management Act, 1999 and the various Notifications, Rules and Regulations framed thereunder.
- Foreign Contribution (Regulation) Act, 2010.
- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
- Competition Act, 2002.
- Special Economic Zones Act, 2005.
- Prevention of Money Laundering Act, 2002.
- Micro, Small and Medium Enterprises Development Act, 2006.
- Essential Commodities Act, 1955.

Securities Laws

- SEBI Act, 1992
- Securities (Contracts) Regulation Act, 1956 and rules made thereunder
- Various rules, regulations guidelines and circulars issued by SEBI

20 PP-SACM&DD

- Provisions of Listing Agreement
- Depositories Act, 1996

Commercial Laws

- Indian Contract Act, 1872
- Transfer of Property Act, 1882
- Arbitration and Conciliation Act, 1996
- Negotiable Instruments Act, 1881
- Sale of Goods Act, 1930
- Intellectual Property Rights Laws.

Fiscal Laws

- Income Tax Act, 1961
- Customs Act, 1962
- Goods and Services Tax (GST)

Labour Laws

- Minimum Wages Act, 1948
- Payment of Bonus Act, 1965
- Payment of Gratuity Act, 1972
- Employees' Provident Funds and (Misc. Provisions) Act, 1952
- Employees' State Insurance Act, 1948
- Factories Act, 1948
- Employees' Compensation Act, 1923
- Maternity Benefit Act, 1961
- Industrial Dispute Act, 1947
- Contract Labour (Regulation and Abolition) Act, 1970

Pollution/Environment related Laws

- Air (Prevention and Control of Pollution) Act, 1981
- Water (Prevention and Control of Pollution) Act, 1974
- Water (Prevention and Control of Pollution) Cess Act, 1974
- Environment Protection Act, 1986
- Public Liability Insurance Act, 1991
- National Green Tribunal Act, 2010.

Industry Specific Laws

Legislations applicable to specific categories of industries - Tourism, Pharmaceutical, FMCG, Hospitality, Information Technology, Electricity, Power Generation & Transmission, Insurance, Banking, Chit Funds, etc.

Local Laws

These would include Stamp Act, Registration Act, Municipal and Civic Administration Laws, Shops and Establishments, etc.

ESTABLISHMENT OF COMPLIANCE MANAGEMENT FRAMEWORK

Any corporate compliance management framework encompasses the various steps relating to Compliance Identification, Compliance Ownership, Compliance Awareness, Compliance Reporting and Periodical Compliance MIS.

The Compliance Identification involves the identification of compliances under various legislations applicable to the company, in consultation with the functional heads. The legal team has to identify the legislations applicable to the company and identify the compliances that are required under each legislation or rules and regulations made there under.

The Compliance Ownership of the various compliances has to be described function wise and individual wise. Clear description of primary and secondary ownership is also very important. While the primary owner is mainly responsible for the compliance the secondary owner (usually the supervisor of the primary owner) has to supervise the compliance. Ex: Secretarial Officer/Company Secretary may be primarily responsible.

The Compliance Awareness covers the establishment of the legal compliance management and creation of awareness of the various Legal Compliances amongst those responsible. Sometimes the compliances are handled by persons who are not fully aware of the requirements of the legislations and hence creating appropriate awareness amongst the owners is very important. This could be done in the form of meetings/trainings explaining the various compliances or some manual containing the details of compliances.

In the process of the Compliance Reporting status of Compliances or non-compliances should be communicated to the concerned. Reporting of non-compliances ensures that appropriate corrective action is being taken by the responsible person in case of the failure in doing compliances.

PROCESS OF CORPORATE COMPLIANCE REPORTING (CCR)

Under the various business structures, the actual process of compiling the information under the various laws vary from company to company and is dependent on various factors such as the number of units and scale of operations, size of the company, number of business activities etc. a brief process of the CCR mechanism is as under -

- Functional heads for the reporting of various laws have to be identified. For example - the company secretary would be the functional head for reporting of company law, listing regulations and commercial laws. Similarly, the head of the personnel department could report the compliance of labour and industrial laws and the fiscal law compliance would be the domain of head of the finance/accounts departments.
- Each of the functional heads may collect and classify the relevant information from the various units/locations pertaining to their department and consolidate them in the form of a report.
- The report shall carry an affirmation from the functional heads that the said report has been prepared based on the inputs received from the various units/offices and then list out the specific compliances/non-compliances, as already circulated to the functional heads. Each of the functional heads should forward their respective compliance reports to the company secretary/managing director.

- The company secretary would then brief the managing director and with suitable inputs from the company secretary, the managing director would consolidate and present, under his signature, a comprehensive CCR to the board for its information, advice and noting. The whole process of CCR is contingent on the creation and implementation of comprehensive legal Management Information System (MIS).

ENTITY WISE COMPLIANCES

The Companies Act, 2013, lays down the detailed provisions regarding incorporation, requirement of members, qualification, appointment, remuneration, removal, retirement of directors, conducting board and shareholders meetings, passing of resolutions, related party transactions, the maintenance of books of accounts and the preparation and presentation of annual accounts (matters to be reported upon in the boards reports of the companies), periodical filing of forms with the Registrar of Companies, etc.

Every company incorporated under the companies act need to perform the compliances as required under the law, the Companies Act, 2013 has provided the specific exemptions to the some class of the companies through the exemption notifications and through the further amendments in the Companies Act, 2013.

Further, the companies are required to convene regular board meetings and should also observe the Secretarial Standards issued by the ICSI as applicable to the company. As the part of the annual compliances every company is required to file its financial statement and annual return every financial year before the due date, with the Registrar of Companies.

In addition to that, there are several event base compliances wherein the company is required to file the report, return or intimation to the concerned Registrar of Companies, which is an time bound activity and any failure in such compliance will liable to action by the various regulators.

On the basis of the structure of the companies, the companies can be divided in to the Listed company, Public company, Private Company, Section 8 Company, which is further categorized as One Person Company, Small Company, and Government Company.

ACTIVITY WISE COMPLIANCES

The activity wise compliances include the compliances relating to the business activities of the company such as Banking Company, Insurance Company, Housing Development Company, IFSC Company, NBFC, Section 8 Company, Producer Company, Chit Fund Company, Plantation Company etc.

These companies are governed under the Companies Act, 2013 as well as the Laws, Rules, Regulations under which they have been registered. The Companies Act, 2013 provides the specific provision, exemptions to such companies, however, the additional compliance requirement may be required for these companies to avail such exemptions.

SECTOR WISE COMPLIANCES

For the sector wise compliances the companies can be broadly divided in to the Agriculture & Allied Activities, Manufacturing, Construction, Power, Electricity; Gas & Water, Mining & Quarrying, Business Services, Real Estate and Renting, Trading, Community; Personal & Social Services, Transport, Storage & Communications, Finance, Insurance etc. these companies are governed under the Companies Act, 2013 along with the sector specific laws, rules, regulations, policies, procedures and state and local laws applicable to the company .

INDUSTRY SPECIFIC COMPLIANCES

For identification of the industries specific compliance, it is necessary to correlate the business activity of the company with the various laws applicable to such business activity. For example if the company is dealing cement industry, which is related to the Construction sector & Real estate, Mining, Supply, Distribution and Trading of raw material, Bye product etc., The company may horizontally or vertically associated with such

business activity or in multiple business activity relating to any industry and the sector. In such situation, The professional should be careful and use the expertise in identification of the business Activity and sector and industry specific law. The some of the business activities along with the allied sub activity are provided as under:

Agriculture, Forestry, Fishing: Production of crops and animals, forestry and logging, fishing and aquaculture, support activities to agriculture.

Mining and Quarrying: Mining of coal and lignite, extraction of crude petroleum & natural gas, mining of metal ores, other mining & quarrying activities, mining support services activities.

Manufacturing: Food, beverages and tobacco products, textile, leather and other apparel products, wood and wood products, furniture, paper and paper products, printing, reproduction of recorded media. Coke and refined petroleum products, chemical and chemical products, pharmaceuticals, medicinal chemical and botanical products, metal and metal products, plastic products, non-metallic mineral products, rubber products, fabricated metal products, computer, electronic, communication and scientific measuring & control equipment, electrical equipment, general purpose and special purpose machinery & equipment, transport equipment, motor vehicles, trailers, semi-trailers and other, transport vehicles, repair & installation of machinery & equipment, motor vehicles, other manufacturing including jewelry, musical instruments, medical instruments, sports goods, etc. activities.

Electricity, gas, steam and air condition supply: Electric power generation, transmission and distribution, manufacture of gas, distribution of gaseous fuels, steam and air conditioning supply.

Water supply, sewerage and waste management: Water collection, treatment and supply, sewerage, waste collection, treatment and disposal activities, materials recovery and other waste management services.

Construction: Buildings, roads, railways, utility projects, demolition & site preparation, electrical, plumbing & other specialized construction activities.

Trade: Wholesale trading, retail trading.

Transport and storage: Land transport via road, land transport via railways & pipelines, water transport, air transport, services incidental to land, water & air transportation, warehousing and storage, postal & courier activities.

Accommodation and Food Service: Accommodation services provided by hotel, inns, resorts, holiday homes, hostel, etc., food and beverage services provided by hotels, restaurants, caterers, etc.

Information and communication: Publishing of newspapers, books, periodicals, etc. activities, publishing of computer operating systems, system software, application software, games, etc., motion picture, video and television programme, production, sound recording and music publishing activities, broadcasting and programming activities, wired, wireless or satellite telecommunication activities computer programming, consultancy and related activities data processing, hosting and related activities; web portal, other information & communication service activities.

Financial and insurance Service: Banking activities by central, commercial and saving banks, activities by trusts, funds and other financial holding companies, life/non-life insurance and reinsurance activities, pension fund activities, financial and credit leasing activities, fund management services, financial advisory, brokerage and consultancy services, other financial activities.

Real Estate: Real estate activities with own or leased property, real estate activities on fee or contract basis.

Professional, Scientific and Technical: Legal activities, accounting, book keeping and auditing activities, tax consultancy, management consultancy activities, architecture, engineering activities, technical testing and analysis activities, scientific research and development, advertising and market research, specialized design & photographic activities, veterinary activities, other professional, scientific and technical activities.

Support service to Organizations: Rental and leasing of motor vehicles, machinery, equipment, capital goods, etc. activities, placement agencies and human resource management services, travel agency and tour operators, security and investigation activities, housekeeping & maintenance service office administrative and other business activities including call centers, organising conventions, collection agencies, packaging activities etc. other support services to organizations.

Education: Primary & secondary education services, higher education, technical & vocational education, sports, recreation, cultural and other education, educational support services.

Hospital and Medical Care: Hospital activities, medical and dental practice, nursing, pathology, blood bank services, etc., residential nursing care activities, residential care for elderly, disabled and other ailments, counseling, welfare, referral activities without accommodation for elderly and disabled, other hospital and medical care activities.

Arts, entertainment and recreation: Creative, arts and entertainment activities, library, archives, museums and other cultural activities, gambling & betting activities, sports, amusement and recreation activities.

Personal and Household service: Activities of membership organisations, repair of computers and personal and household goods, washing and cleaning of textile and fur products, hair dressing and other beauty treatment, other personal service activities.

Activities of extraterritorial organizations and bodies : Activities of extraterritorial organizations such as UN and its agencies, IMF, World Bank, OPEC, European Commission, etc.

STATE AND LOCAL LAWS COMPLIANCES

The companies having nationwide and international operation need to comply with the various local laws and state laws as applicable to the each office and the every operation of the company. In India, the typical corporate structure consist of the Registered Office, Corporate Office, Regional Head offices, State office, Warehouse, Branch office etc.

Every corporate structure is required to comply with some local and state laws applicable to the company. The company should have a reporting structure of the same to provide the compliance status of the company.

COMPLIANCES REQUIREMENTS UNDER THE COMPANIES ACT, 2013

1. Private Limited Company

Sl. No.	Title	Section & Rules	Particulars of Compliances	
1.	Disclosures by a Director of his Interest	184 (1) & Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Form MBP-1	Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, should disclose his concern or interest in other entities which shall include the shareholding.

2.	Disqualification of Directors	164(2) & 143(3) (g) & Rule 14(1) of Companies (Appointment of Directors) Rules, 2014	Form DIR-8	Every director shall inform the company concerned about his disqualification under sub-section (2) of section 164, if any, before he is appointed or re-appointed.
3.	Annual Return	92 (4) & (1) & Rule 11 (1) of Companies (Management and Administration) Rules, 2014	E-form MGT-7	Every Company shall file its Annual Return within 60 days of holding the AGM or where no AGM is held in any year within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM. Annual Return of Every Private Company shall be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.
4.	Placing of the annual return on website	92(3) & 134(3) (a) & Rule 12(1) of the Companies (Management and Administration) Rules, 2014.	Form MGT-7	Every company is required to place annual return on the website of the company and the web address where annual return has been placed will be required to be mentioned in the Board's Report. Section 92 (3) shall not apply in case of Specified IFSC Private Company - vide Notification No. G.S.R. 9 (E) Dated 4th January, 2017.
5.	Financial Statements	137 & Rule 12(1) of Companies (Accounts) Rules, 2014	E-form AOC-4 & E-form AOC-4 CFS	Company is required to file its financial statements, including consolidated financial statement along with all the documents required to be or attached to such financial statements, duly adopted at the AGM of the company with the Registrar within 30 days of the date of AGM or in case financial statements are adopted in the adjourned AGM, within 30 days of the date of adjourned AGM. If annual general meeting is not held for any year, the financial statements along with the documents required to be attached under sub-section (1) of section 137 duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be with the Registrar within 30 days of the last date before which the annual general meeting should have been held.
6.	Certification of Annual Return	92 & Rule 11(2) of Companies (Management and Administration) Rules, 2014	Form MGT-8	The annual return filed by a listed company or a company having paid up share capital of Rs. 10 Crores or more or turnover of Rs. 50 crores or more shall be certified by a Company Secretary in Practice.

7.	Boards' Report	134 & Rule 8 of the Companies (Accounts) Rules, 2014.	<p>Directors' Report shall be prepared in a manner which shall include all the information required under Section 134. It should be signed by the "Chairperson" authorized by the Board, and where he is not so authorized, by at least 2 Directors one of whom shall be a managing director or by the director where there is one director.</p> <p>In case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors. (Vide Notification No. G.S.R. 9(E) dated 4th January, 2017)</p>
8.	Circulation of Financial Statement & other relevant Documents	136	<p>Company shall send to all the members of the Company, all trustees for the debenture holders and to all persons being the persons so entitled, copy of the (approved) Financial Statements (including consolidated Financial Statements, if any, auditor's report and every other document required by law to be annexed/ attached to the financial statements) at least 21 clear days before the Annual General Meeting.</p> <p>Except in case AGM is called on shorter notice pursuant to section 101(1). In case of private company, Section 101 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise. (Vide Notification No. G.S.R. 464 (E) dated 5th June, 2015 regarding exemption to private companies)</p>
9.	Notice of AGM	101 & Rule 18 of the Companies (Management and Administration) Rules, 2014 & SS-2	<p>Every Notice of Annual General Meeting shall be prepared as per Section 101 of Companies Act, 2013 and Secretarial Standard - 2.</p> <p>In case of private company - Section 101 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise. - Notification No. G.S.R.464 (E) dated 5th June, 2015.</p>
10.	Sending of Notice of AGM	101 & SS - 2	<p>Notice of Annual General Meeting shall be sent to all the Directors, Members, Auditors, legal representative of any deceased member and the assignee of an insolvent member.</p> <p>In case of private company - Section 101 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise. - Notification No. G.S.R.464 (E) dated 5th June, 2015.</p>
11.	Board Meetings	173 & SS-1	<p>Every Company shall hold a minimum number of 4 meetings of its Board of Directors every year in such a manner that maximum gap between two meetings should not be more than 120 days. Company should hold at least 1 Board Meeting in every quarter of each calendar year.</p>

12.	Notice of Board Meeting	173 (3) & SS-1	<p>A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.</p> <p>However, meeting of the Board may be called at shorter notice to transact urgent business.</p>	
13.	Appointment of Auditor	139(1) & Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014	E-form ADT-1	<p>Auditor shall be appointed for 5 years in the AGM. The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen (15) days of the meeting in which the auditor is appointed in E-form ADT-1.</p> <p>In case of Specified IFSC Private Company- the notice of auditor's appointment shall be filed with the Registrar within 30 days of the meeting in which the auditor is appointed.</p> <p>(Vide Notification No. G.S.R. 9 (E) Dated 4th January, 2017).</p>
14.	Appointment of Company Secretary	203 & Rule 8A of the Companies (Appointment and Remuneration) Rules, 2014.	Private Company having paid up share capital of Rs. 5 crores or more is required to appoint a whole time Company Secretary.	
15.	Register of members	88 & Rule 3 of the Companies (Management and Administration) Rules, 2014. Form MGT.1 & Form MGT.2	<p>Company shall keep & maintain the following mandatory Registers:</p> <p>Register of Members,</p> <p>Register of debenture-holders,</p> <p>Register of any other security holders.</p>	

2. Small Companies under the Companies Act, 2013

Sl. No.	Title	Section & Rules	Particulars of Compliances	
1.	Disclosures by a Director of his Interest	184(1) & Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014.	Form MBP-1	<p>Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in other entities which shall include the shareholding.</p>

2.	Disqualification of Directors	164(2) & 143(3) (g) & Rule 14(1) of Companies (Appointment of Directors) Rules, 2014	Form DIR-8	Every director shall inform to the company concerned about his disqualification under sub-section (2) of section 164, if any, before he is appointed or re-appointed.
3.	Annual Return	92(4) & (1) & Rule 11 (1) of Companies (Management And administration) Rules, 2014	E-form MGT-7	<p>Every Company shall file its Annual Return within 60 days of holding of AGM or where no AGM is held in any year within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM.</p> <p>Annual Return of every Small Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.</p>
4.	Placing of the annual return on website	92(3) & 134(3) (a) & Rule 12(1) of the Companies (Management and Administration) Rules, 2014.	Form MGT- 7	<p>Every company is required to place annual return on the website of the company and the web address where annual return has been placed will be required to be mentioned in the Board's Report.</p> <p>Section 92 (3) shall not apply in case of Specified IFSC Private Company - vide Notification No. G.S.R. 9 (E) Dated 4th January, 2017.</p>
5.	Financial Statement	137 & Rule 12(1) of Companies (Accounts) Rules, 2014	E-form AOC-4 & E-form AOC-4 CFS	<p>Company is required to file its financial statements, including consolidated financial statement along with all the documents required to be or attached to such financial statements, duly adopted at the AGM of the company with the Registrar within 30 days of the date of AGM or in case financial statements are adopted in the adjourned AGM, within 30 days of the date of adjourned AGM.</p> <p>If annual general meeting is not held for any year, the financial statements along with the documents required to be attached under sub-section (1) of section 137 duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be with the Registrar within 30 days of the last date before which the annual general meeting should have been held.</p>

6.	Board's Report	134 & Rule 8 of the Companies (Accounts) Rules, 2014	<p>Board's Report shall be prepared mentioning all the information required to be included in it for Small Company under Section 134. It should be signed by the "Chairperson" authorized by the Board, where he is not so authorized by at least 2 Directors one of whom shall be a managing director or by the director where there is One (1) director.</p> <p>In case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors. (refer Notification dated 4th January, 2017)</p>
7.	Circulation of Financial Statement & other	136 relevant documents	<p>Company shall send to all the members of the Company, all trustees for the debenture holders and to all persons being the persons so entitled, copy of the (approved) Financial Statements (including consolidated Financial Statements, if any auditor's report and every other document required by law to be annexed/ attached to the financial statements) at least 21 clear days before the Annual General Meeting.</p> <p>(Except in case of AGM is called on Shorter Notice pursuant to section 101(1).</p> <p>In case of private company which is a small company, Section 101 shall apply, unless otherwise specified in respective sections or the articles of the company provide otherwise.</p>
8.	Notice of AGM	101 & Rule 18 of the Companies (Management and Administration) Rules, 2014 & SS- 2	Every Notice of Annual General Meeting shall be prepared as per Section 101 of Companies Act, 2013 and Secretarial Standard - 2.
9.	Sending of Notice of AGM	101 & SS - 2	Notice of Annual General Meeting shall be sent to all the Directors, Members, Auditors, legal representative of any deceased member and the assignee of an insolvent member.
10.	Board Meetings	173 (5) & SS-1	Every Small Company shall hold at least one (1) meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings shall not be less than 90 days.
11.	Notice of Board Meeting	173 (3) & SS-1	<p>A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.</p> <p>However, meeting of the Board may be called at shorter notice to transact urgent business.</p>

12.	Appointment of Auditor	139(1) & Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014.	E-form ADT-1	Auditor shall be appointed for 5 years in the AGM. The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen (15) days of the meeting in which the auditor is appointed in E-form ADT-1.
13.	Register of members	88 & Rule 3 of the Companies (Management and Administration) Rules, 2014. Form MGT.1 & Form MGT.2	Company shall keep & maintain the following mandatory Registers: <ul style="list-style-type: none"> • Register of Members, • Register of debenture-holders, • Register of any other security holders. 	

3. One Person Company (OPC) under the Companies Act, 2013

Sl. No.	Title	Section & Rules	Particulars of Compliances	
1.	Disclosures by a Director of his Interest	184(1) & Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Form MBP-1	Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in other entities which shall include the shareholding.
2.	Disqualification of Directors	164(2) & 143(3) (g) & Rule 14(1) of Companies (Appointment of Directors) Rules, 2014	Form DIR-8	Every director shall inform the company concerned about his disqualification under sub-section (2) of section 164, if any, before he is appointed or re-appointed.
3.	Meaning of AGM for the OPC means "Resolution passed for the Ordinary Business entered into the Minute Book. In case of OPC, there is no need to hold AGM because there is only one Member.			
4.	Annual Return	92(4) & (1) & Rule 11(1) of Companies (Management and Administration) Rules, 2014	E-form MGT-7	OPC shall file its Annual Return within 60 days of entry of ordinary resolution in Minute Book. In Case of OPC, there is no need to hold AGM. Annual Return of every One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

5.	Financial Statement	137 & proviso 3 to Rule 12(1) of Companies (Accounts) Rules, 2014	E-form AOC-4	One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.
6.	Directors' Report	134(4)		Directors' Report shall be signed by only one director, for submission to the auditor for his report thereon. In case of OPC, the report of the Board of Directors to be attached to the financial statement under section 134 means a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
7.	Board Meetings	173 (5) & SS-1		Every One Person Company shall hold at least one (1) meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings shall not be less than 90 days. However, provisions of section 173 (5) and section 174 relating to quorum shall not apply to One Person Company in which there is only one (1) director on its Board of Directors.
8.	Notice of Board Meeting	173 (3) & SS-1		A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. However, meeting of the Board may be called at shorter notice to transact urgent business.
9.	Appointment of Auditor	139(1) & Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014	E-form ADT-1	Auditor shall be appointed for 5 years. The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen (15) days of the meeting in which the auditor is appointed in e-Form ADT-1.

Notes:

- In an OPC in which there is only one Director, Secretarial Standard- 1 will not apply.
- OPC is not required to hold AGM so Secretarial Standard- 2 is not applicable to OPC.
- Section 98 and Section 100 to Section 111 are not applicable on One Person Company.
- No need of preparation of Cash Flow Statement, in case of OPC.

Compliances by Limited Liability Partnership (LLP)

As per section 3 of the LLP Act, 2008 a Limited Liability Partnership has the following characteristics:

- A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
- A limited liability partnership shall have perpetual succession.
- Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership. A limited liability partnership is popularly known as an “LLP”, and has become an alternative business vehicle to carry out business as it combines the characteristics of a

32 PP-SACM&DD

private company and a conventional partnership. Over the period of time a LLP has gained popularity due to the following:

- LLP provides limited liability status to its partners and offers the flexibility of internal arrangement through an agreement between the partners.
- This combination gives entrepreneurs and businessmen a more structured business vehicle compared to a sole proprietorship or a conventional partnership.
- It provides the flexibility of controlling the business operation in accordance with the partnership agreement whilst enjoying the limited liability status compared to a company which is subject to strict compliance requirements under the Companies Act 1965 in most of its affairs.
- LLP is a business vehicle which offers simple and flexible procedures in terms of its formation, maintenance and termination while simultaneously has the necessary dynamics and appeal to be able to compete domestically and internationally.

Illustrative list of Compliance Requirement under LLP Act, 2008

1	Section 32 of read with sub-rule (1) of Rule 23	The contribution of each partner shall be accounted for and disclosed in the Accounts of the limited liability partnership along with nature of contribution and amount.
2	sub-rule (2) of Rule 23	The contribution of a partner consisting of tangible, movable or immovable or intangible property or other benefits brought or contribution by way of an agreement or contract for services shall be valued by a practicing Chartered Accountant or by a practicing Cost Accountant or by approved valuer from the panel maintained by the Central Government.
3	Section 34	The LLP shall maintain its books of accounts relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting. The LLP shall maintain its books of accounts at its registered office for a period of Eight years.
4	Rule 24,	The Books of Accounts of a limited liability partnership shall contain the following: <ul style="list-style-type: none"> ● particulars of all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; ● a record of the assets and liabilities; ● statements of cost of goods purchased, inventories, work-in-progress, finished goods and cost of goods sold; and ● any other particulars which the partners may decide.
5	sub-rule (3) of Rule 24	The books of account of a limited liability partnership are required to be preserved for eight years from the date on which they are made.
6	sub-section (3) of Section 34 read with sub-rule (4) Rule 24	Every limited liability partnership shall file the Statement of Account and Solvency in Form 8 with the Registrar, within a period of thirty days from the end of six months of the financial year to which the Statement of Account and Solvency relates.

7	Section 35	every LLP is required to file an Annual Return duly authenticated with the Registrar in 60 days of closure of financial year in Form 1
8	sub-rule (4) of Rule 34	every foreign limited liability partnership its Statement of Account and Solvency in Form 8 with the Registrar the in accordance with provisions of rule 24 duly signed by the authorized representatives within a period of 30 days from the end of six months of the financial year
9	Statement of Account and Solvency of a LLP	The designated partners on behalf of the limited liability partnership are required to sign the Statement of Account and Solvency of a LLP.
10	sub-section (4) of Section 34 read with sub-rule (8) of Rule 24,	The accounts of following limited liability partnerships, shall be required to get its accounts audited: <ul style="list-style-type: none"> • whose turnover in any financial year exceeds forty lakh rupees, or • whose contribution exceeds twenty-five lakh rupees
11	eligible to be appointed as an auditor of a LLP	A Chartered Accountant in practice shall be qualified for appointment as an auditor of a limited liability partnership.
12	sub-rule (17) of Rule 24	The remuneration of an auditor appointed by the limited liability partnership shall be fixed by the designated partners or by following the procedure as laid down in the limited liability partnership agreement.
13	Rule 25(2) Additional certificates	Circumstances where additional certificates required <ul style="list-style-type: none"> • Turnover up to `5 crores during Financial Year or Contribution upto `50 lakhs require Certificate from designatory partner other than signatory of Annual Return • In other Cases Certificates from Company Secretary in Practice
14	Rule 27, records of LLP to be preserved	<p>Records to be preserved Permanently</p> <ul style="list-style-type: none"> a) Incorporation document [Section 11(1)(b)] Permanent b) Notice of situation of registered office [Section 13] Permanent c) Information with regard to Limited Liability Permanent Partnership Agreement or any changes made therein [Section 23(2)] d) Notice of other address of any limited liability Permanent partnership at which documents to be served [Section 13(2)] <p>Records to be preserved for 21 Years</p> <ul style="list-style-type: none"> • All papers, registers, refund orders and correspondence relating to the limited liability partnership liquidation accounts to be preserved for 21 years. <p>Records to be preserved for 5 Years</p> <ul style="list-style-type: none"> a) copies of Government orders relating to limited liability partnership; registered documents of limited liability partnership which have been fully wound up and finally dissolved together with

		<p>b) correspondence relating to such limited liability partnership;</p> <p>c) papers relating to legal proceedings from the date of disposal of the case and appeal, if any;</p> <p>d) copies of statistical returns furnished to Government;</p> <p>e) all correspondences including correspondences relating to scrutiny of accounts, annual returns, prosecutions, reports to the Central Government and the Tribunal and the correspondences relating to complaints.</p> <p>In case of prosecution matter, the date is to be recorded from the date of disposal of the case and appeal, if any.</p> <p>Records to be preserved for 3 Years</p> <p>(a) All books, records and papers, other than those specified in other categories.</p> <p>(b) Routine correspondence regarding payment of fees, additional filing fees and correspondence about the return of documents.</p> <p>Preservation of Records under Annexure C of the LLP rules</p> <p>a) Statement of compliance with requirements of the Act by an Advocate or Company Secretary or Chartered Accountant or Cost Accountant in whole-time practice and by any person who subscribed his name to the incorporation document [Section 11(1)(c)] - 5 years</p> <p>b) Notice of a person ceasing to be a partner and any change in the name or address of a partner - 5 years</p> <p>c) Registered documents relating to LLP struck off under Section 75 together with correspondence or copy of the order of restoration of the LLP into the register - 5 years</p> <p>d) Annual return of a limited liability partnership 5 years</p> <p>e) Consent of candidates to act as designated partner to be filed with the Registrar [section 7(4)] - 5 years</p> <p>f) Consent to act as a partner - 5 years</p> <p>g) Statement by all the partners of firm containing particulars of firm along with application for its conversion into limited liability partnership – 5 years</p> <p>h) Statement by all the shareholders containing particulars of private company/unlisted public company along with application for its conversion into limited liability partnership - 5 years</p> <p>i) Certified copy of the order(s) of the Tribunal under section 60/61/62.- 5 years</p> <p>j) Copy of the order of dissolution of a LLP by Tribunal [Section 63] -5 years</p> <p>k) Statement of Account and Solvency - 8 years</p> <p>Records of foreign limited liability partnerships:</p> <p>Registered documents of foreign limited liability partnerships which cease to have any place of business in India shall be destroyed after expiry of three years from the date such limited liability partnerships cease to have any place of business in India.</p>
--	--	---

Compliances under Section 8 Company

Any person or an association of persons intending to register a limited liability company for objects specified below can opt to apply for registration of Section 8 Company. The following have to be proved to the satisfaction of the Central Government that:

- (a) its objects includes promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) the company after incorporation intends to apply its profits, if any, or other income in promoting such objects only; and
- (c) the company intends to prohibit the payment of any dividend to its members.

Exemption to Section 8 Companies

Sl. No.	Provisions of the Act	Exceptions/Modifications/Adoptions
1	Section 2(24)	The provisions of clause (24) of section 2 shall not apply. The Company Secretary of Section 8 Company need not be a member of the Institute of Company Secretaries of India
2	Section 2(68)	The requirement of Minimum paid up share capital shall not apply. Descriptive Note: Section 2(68) defines a private company. Though the companies (amendment) Act 2015 has removed the minimum prescription of Rs.1 lakh as minimum paid up capital for private limited companies, the provisions for prescribing minimum paid up capital is still retained. However, the requirement of minimum- paid up capital shall not apply to section 8 companies.
3	Section 2(71)	The requirement of Minimum paid-up share capital shall not apply. Descriptive Note: Section 2(71) defines a public company. Though the companies (amendment) Act 2015 has removed the minimum prescription of `5 lakh as minimum paid up capital for public limited companies, the provisions for prescribing minimum paid up capital is retained. However, the requirement of minimum- paid up capital shall not apply to section 8 companies.
4	Section 96(2)	In sub-section (2), after the proviso and before the explanation, the following proviso shall be inserted, namely:- Provided further that the time, date and place of each annual general meeting are decided upon beforehand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting. Descriptive Note: Section 96(2) inter-alia covers time, date venue of annual general meeting. In case of Section 8 companies, the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.

5	Section 101(1)	<p>In sub-section (1), for the words “Twenty one days” the words “Fourteen Days” shall be substituted.</p> <p>Descriptive Note:</p> <p>Section 101(1) deals with notice of the General meeting with clear twenty one days notice. In case of Section 8 Companies 14 clear days notice is sufficient for a general meeting.</p>
6	Section 118	<p>The section shall not apply as a whole except that minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.</p> <p>Descriptive Note:</p> <p>Section 118 deals with minutes of proceedings of general/board and other meetings. Provision of Section 118 does not apply to Section 8 companies except that minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.</p>
7	Section 136(1)	<p>In sub-section (1), for the words “twenty one days”, the words “fourteen days” shall be substituted.</p> <p>Descriptive Note:</p> <p>Section 136(1) deals with the rights of members to copies of audited financial statement, before twenty one days before the date of annual general meeting. Section 8 companies may send the audited financial statements 14 days before the date of annual general meeting.</p>
8	Clause (b) and first proviso to Sub-section of Section 149 1) sub	<p>Shall not apply.</p> <p>Descriptive Note:</p> <p>In Clause (b) and first proviso to Section 149(1) exemption is provided with respect to provisions related maximum number of directors and permission of shareholders for having director beyond 15.</p>
9	Sub-sections (4), (5), (6), (7), (8),(9),(10), (11), clause (i) of sub-section (12) and sub-section (13) of section 149.	<p>Shall not apply.</p> <p>Descriptive Note:</p> <p>The cluster of sub-sections of section 149 given herein pertains to independent directors. These provisions will not apply to a Section 8 Company.</p>
10	Section 150	<p>Shall not apply.</p> <p>Descriptive Note:</p> <p>Section 150 deals with manner of selection of independent directors and maintenance of databank of independent directors, which is not applicable to Section 8 companies.</p>

11	Proviso to sub-section (5) of section 152	<p>Shall not apply.</p> <p>Descriptive Note:</p> <p>Proviso to sub-section (5) of section 152 relates to appointment of independent directors. It is not applicable to section 8 companies.</p>
12	Section 160	<p>Shall not apply to companies whose articles provide for election of directors by ballot.</p> <p>Descriptive Note</p> <p>Section 160 deals with right of persons other than retiring directors to stand for directorship. Section 160 shall not apply to section 8 companies whose articles provide for election of directors by ballot</p>
13	Section 165(1)	<p>Shall not apply.</p> <p>Descriptive Note:</p> <p>Section 165(1) deals with restrictions on number of directorships. Directorship of Section 8 Companies are not reckoned for this purpose.</p>
14	Section 173(1)	<p>Shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.</p> <p>Descriptive Note:</p> <p>Section 173(1) mandates convening of first board meeting within 30 days of incorporation and minimum of four board meeting every year, with a gap not exceeding 120 days between two consecutive meetings. With regard to Section 8 companies this section shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.</p>
15	Section 174(1)	<p>In sub-section (1),-</p> <p>(a) for the words “one-third of its total strength or two directors, whichever is higher”, the words “either eight members or twenty five per cent. of its total strength whichever is less” shall be substituted;</p> <p>(b) the following proviso shall be inserted, namely:-</p> <p>“Provided that the quorum shall not be less than two members”.</p> <p>Descriptive Note:</p> <p>Section 174(1) states that the quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section. In case of Section 8 companies the quorum for the board meetings shall be either eight members or twenty five per cent of its total strength whichever is less. However, the quorum shall not be less than two members.</p>

16	Section177(2)	<p>The words “with independent directors forming a majority” shall be omitted.</p> <p>Descriptive Note:</p> <p>Section 177(2) requires audit committee to have majority of independent directors. It is not required for Section 8 Companies</p>
17	Section178	<p>Shall not apply</p> <p>Descriptive Note:</p> <p>Section 178 pertains to nomination and remuneration committee and stakeholders' relationship committee. Section 178 is not applicable to section 8 companies</p>
18	Section179	<p>Matters referred to in clauses (d), (e) and (f) of sub-section (3) may be decided by the Board by circulation instead of at a Meeting.</p> <p>Descriptive Note:</p> <p>Section 179(3) deals with resolutions to be passed at meetings of the Board. Section 179(3)(d),(e) and (f) pertains to resolution to borrow monies, to invest funds of the company and to grant loans or give guarantee or provide security in respect of loans. These items may be decided by the Board by circulation in case of Section 8 companies.</p>
19	Sub-section(2)of section 184	<p>Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p> <p>Descriptive Note:</p> <p>Section 184(2) prohibits participation of interested directors. In case of Section 8 Companies it shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p>
20	Sub-section (7) of section 186.	<p>Modification in Section 186(7) The provisions with respect to minimum rate of interest shall not apply to a company in which twenty-six per cent. or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance of its objects as stated in its memorandum of association</p>
21	Section189	<p>Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p> <p>Descriptive Note:</p> <p>Section 189 deals with register of contracts or arrangements in which directors are interested. Section 189 is applicable to section 8 companies only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p>

REGISTER, RETURNS, BOOKS AND OTHER RECORDS TO BE KEPT BY COMPANIES

Section/Rule	Particulars	Form No.
Rule 7 of the Companies (Registration Offices & Fees) Rules, 2014	Original Documents duly stamped relating to incorporation and matters incidental thereto and changes in any of the clauses of MOA/AOA. In any other cases, the relevant / related documents	
Section 42(9) and Rule 14(3) of Companies (Prospectus and Allotment of Securities) Rules, 2014	Maintenance of complete record of Private Placement Offers.	PAS-5
Section 46(3) and Rule 6 (3) (a) of Companies (Share Capital and Debentures) Rules, 2014	Register of Renewed and Duplicate Share Certificates-Entries made should be authenticated by company secretary or the person authorized by the Board for sealing and signing the share certificate under Rule 5(3) of Chapter IV.	SH-2
Section 54 and Rule 8(14) (a) of Companies (Share Capital and Debentures) Rules, 2014)	Register of Sweat Equity Shares-Entry shall be made forthwith on issue of sweat equity shares u/s.54. Authentication of the entries be made by company secretary or by any other person authorized by the Board in this behalf.	SH-3
Section 62(1)(b) and Rule 12 (10) (a) of Companies (Share Capital and Debentures) Rules, 2014	Register of Employees Stock Options-Entry shall be made forthwith on issue of shares to employees under employees' stock option scheme u/s. 62(b). Authentication of secretary or by any other person authorized by the Board in this behalf. The entries be made by company secretary or by any other person authorized by the Board in this behalf.	SH-6
Section 68(9) and Rule 17 (12) (a) of Companies (Share Capital and Debentures) Rules, 2014	Register of Shares or other Securities bought back. Authentication of the entries be made by company secretary or by any other person authorized by the Board in this behalf.	SH-10
Section 73, 76 and Rule 14 (1) of Companies (Acceptance of Deposits) Rules, 2014	Register of Deposits-Entry should be made within 7 days of the issue of duly authenticated receipt in this regard by director, secretary or the person authorized by the board in this behalf.	Particulars specified in Rule 14
Section 85 and Rule 10 (1) of Companies (Registration of Charges) Rules, 2014	Register of Charges	CHG- 7
Section 88 and Rule 3 (1), 5(1) & (2), 6, 8 & 15 of Companies (Management and Administration) Rules, 2014	Register of Members	MGT- 1

Section 88 and Rule 4 & 15 (2) of Companies (Management and Administration) Rules, 2014	Register of debenture holder and other security holders	MGT- 2
Section 88 and Rule 7 & 15 of Companies (Management And Administration) Rules, 2014	Foreign Register of Members	MGT- 1
Section 88 and Rule 7 & 15 of Companies (Management And Administration) Rules, 2014	Foreign Register of Debenture holders/other security holders with index of names	MGT- 2
Section 90(2) and Rule 5 of Companies (Management And Administration) Rules, 2014	Register of significant beneficial owners	BEN-3
Section 92 and Rule 11 & 15(3) of Companies (Management and Administration) Rules, 2014	Annual Return and attachments	MGT- 7
Section 105(7) and Rule 19 of Companies (Management and Administration) Rules, 2014	Proxy form	MGT-11
Section 118 and Rule 25 of Companies (Management and Administration) Rules, 2014	Minutes (General Meetings, Class Meetings of Shareholders, Creditors, Board & Committee Meetings or Resolution passed by Postal Ballot)	No format specified
Regulation 65- Table F- Schedule I & SS-1	Attendance Register – Board & Committee Meetings	No format specified
Section 118 and Rule 25 of Companies (Management and Administration) Rules, 2014	Minutes (General Meeting, Class of Shareholders, Creditors or Resolution passed by Postal Ballot)	No format specified
Section 128 and 129, Schedule III	Books of Accounts (together with the vouchers to any entry in such books of account)	Schedule III
Section 170 and Rule 17 of Companies (Appointment and Qualification of Directors) Rules, 2014	Register of Directors & Key Managerial Personnel and their shareholding	Particulars specified in Rule 17
Section 184(1) and Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Notice of interest by Director	MBP-1
Section 186(9) and Rule 12(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Register of Loans, Guarantee, Security and in respect of Acquisition made by the company	MBP-2

Section 187(3) and Rule 14(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Register of Investment not held in its own name by the company	MBP-3
Section 189(1) and Rule 16 of Companies (Meetings of Board and its Powers) Rules, 2014	Register of Contracts or arrangements with related party and with Bodies corporate etc. in which directors are interested	MBP-4

Compliances under SEBI (LODR) Regulations, 2015

a. Common Obligations to Listed Entity

Sl. No.	Compliance	Regulation	Time Period	Event
1	Submission of Compliance Certificate to the Exchange	7(3)	Within one month of end of each half of the financial year,	Submission of Compliance Certificate to Stock Exchange certifying that all activities in relation to both physical and electronic share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the Board.
2	Appointment/ Alteration of Share Transfer Agent	7(5)	Intimate to the Stock Exchange such appointment or alteration within 7 days on entering into agreement Shall be placed before the Board of Directors in subsequent Meeting.	Company can manage in house Share Transfer Facility. But as and when the total number of holders of securities of the listed entity exceeds one lac, the listed entity shall appoint Share Transfer Agent.
3	Grievance Redressal Mechanism	13	Within 21 days of the end of the each quarter. Same statement shall be placed before the Board of Director quarterly.	The listed entity shall file with the recognized stock exchange(s) a statement giving <ul style="list-style-type: none"> • The number of investor complaints pending at the beginning of the quarter, • Those received during the quarter, • Disposed of during the quarter and • Those remaining unresolved at the end of the quarter.

Obligations of listed entity which has listed its specified securities i.e. equity or convertible securities.

Sl. No.	Compliance	Regulation	Time Period	Event
1.	Annual Secretarial Compliance report	24A	Within 60 days of the end of the financial year.	The annual secretarial compliance report in the prescribed format shall be submitted by the listed entity to the stock exchanges.
2	Quarterly Compliance Report on Corporate Governance	27(2)	Within 15 days from the closure of quarter.	<p>The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board.</p> <p>Details of all material transactions with related parties shall be disclosed.</p> <p>Report shall be sign either by compliance officer or chief executive officer</p>
3	Prior Intimation to SE about Board Meeting	29(1)	At least 5 (Five) days in advance excluding the date of intimation & date of board meeting.	Intimation about the Meeting in which Financial Results viz. quarterly, half yearly, or annual, as the case may be due for consideration.
4	Prior Intimation to SE about Board Meeting	29(2)	At least 2 working days in advance excluding the date of intimation & date of board meeting.	<p>Intimation about the Meeting in which following matters are due to consideration:</p> <p>Proposal for Buyback of Securities</p> <p>Proposal for voluntary delisting of Listing entity from the Stock Exchange(s)</p> <p>Fund raising by following ways</p> <p>Further Public Offer, Rights Issue, American Depository Receipts/Global Depository Receipts/Foreign Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue or any other method and for determination of issue price:</p> <p>Declaration/Recommendation of Dividend</p> <p>Issue of Convertible Securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend</p> <p>Proposal for declaration of Bonus Securities.</p>

5	Prior Intimation to SE about Board Meeting	29(3)	At least 11 working days in advance.	Any Alteration in the form or nature of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof. Any Alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.
6	General Meeting Intimation:			Intimation shall also be given in case of any Annual General Meeting or Extraordinary General Meeting or Postal Ballot that is proposed to be held for obtaining shareholder approval for further fund raising indicating type of issuance.
7	Outcome of Board Meeting	Second Proviso to 30(6)	Made within 30 Minutes (thirty minutes) of the conclusion of the board meeting.	Disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III
8	Disclosure of events or information	30(6)	As soon as reasonably possible and not later than twenty four hours from the occurrence of event or information.	The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information
9	Holding of securities & Shareholding Pattern separately for each class of securities.	31(1)	1. 1 day prior to listing of its securities. 2. Within 21 days from the end of each quarter. 3. Within 10 days of Capital restructuring.	All listed entities which have listed their specified securities, submit Statement of Share Holding
10	Event of Reclassification	31A(7)(c)	Within 24 hrs of occurrence of the event.	The event of reclassification shall be disclosed to the stock exchanges as a material event in accordance with the provisions of these regulations
11	Statement indicating deviation(s) or Variation(s)	32(1)	Quarterly basis to the stock exchange till such time the issue proceeds have been fully utilized or the purpose for which these proceeds were raised has been achieved.	Statement indicating deviation in use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting (of public issue, rights issue, preferential issue).

12	Quarterly Financial Result	33(3)(a)	Within 45 days of end of each quarter, other than the last quarter.	The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange
13	Annual Financial Result	33(3)(d) & (e)	Within 60 days from the end of the financial year.	The listed entity shall submit audited standalone financial results for the financial year,
14	Half Yearly Financial Result	33(3)(f)	Half yearly submission.	submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities
15	Annual Report	34(1)	Within 21 working days of it's being approved & adopted in AGM.	Annual Report to RSE containing Audited Financial Statement, director's report, MDAR.
16	Annual Information Memorandum	35		The listed entity shall submit to the stock exchange(s) an Annual Information Memorandum in the manner specified by the Board from time to time.
17	Draft scheme of Arrangement & Scheme of Arrangement.	37(1)	Before filling with Tribunal/ court as the case may be.	listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement, shall file the draft scheme of arrangement,
18	Issue of Share Certificates	39(3)	Within 2 days of getting its information.	Information regarding loss of share certificates and issue of duplicate certificates.
19	Certificate from Practicing Company Secretary (PCS)	40(9)/(10)	Within 1 month of the end of each half financial year.	Certifying that all certificates have been issued within thirty days of the date of lodgment for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls/allotment monies.
20	Record Date	42(2)	At least 7 working days before the record date excluding the date of intimation & record date.	Notice to Stock Exchange for the record date and specifying the purpose of record date.
21	Intimation to Stock Exchange regarding result of General Meeting	44(3)	Within 48 hours of the conclusion of General Meeting	Details regarding the voting results in the format specified by the Board.

Obligations of Listed Entity Which has Listed Its Non-Convertible Debt Securities or Non-Convertible Redeemable Preference Shares or Both

Sl. No.	Compliance	Regulation	Time Period	Event
1	Interest/ Redemption due	50(1)	At least 11 working days before the date on which interest/ redemption amount of redeemable shares/ debentures shall be payable.	The listed entity shall give prior intimation to the stock exchange(s) regarding interest due and redemption due
2	Intimation to raise fund	50(2)	prior to the meeting of board of directors	Intimation to raise funds to the stock exchange(s) wherein the proposal to raise funds through new non convertible debt prior to the meeting of board of directors securities or non-convertible redeemable preference shares shall be considered
3	Recommendation to Board Meeting	50(3)	At least 2 working days before the board meeting excluding the date of the intimation and date of the meeting	Intimation to stock exchange about the Board Meeting at which the recommendation or declaration of below given matter is proposed to be considered <ul style="list-style-type: none"> ● issue of non convertible debt securities, or ● any other matter affecting the rights or ● interests of holders of non convertible debt securities or ● non convertible redeemable preference shares
4	Half yearly Result	52(1)	Within 45 days at the end of Half financial year	The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board
5	Annual Result	52(2)(a) proviso	Within 60 days at the end of financial year	The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board
6	Certificate	57(1)	Within 2 days of interest due	Certificate Regarding Payment of Interest And Principal.

7	Record Date	60(2)	At least 7 working days before the record date excluding the date of Intimation & record date.	The listed entity shall fix a 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
---	--------------------	-------	--	---

Obligations of Listed Entity which has Listed its Indian Depository Receipts

Sl. No.	Compliance	Regulation	Time Period	Event
1	Indian Depository Receipt holding pattern & Shareholding details	69(1)	Within 15 days at the end of each quarter.	The listed entity shall file with the stock exchange the Indian Depository Receipt holding pattern on a quarterly basis
2	Financial Result	70(1)	within such time as per the listing requirements of the home country	The listed entity shall file periodical financial results with the stock exchange
3	Annual Report	71(1)	at the same time as it is disclosed to the security holder in its home country	The listed entity shall submit to stock exchange an annual report
4	Corporate Governance	72(2)	within such time as per the listing requirements of the home country	The listed entity shall submit to stock exchange a comparative analysis of the corporate governance provisions that are applicable in its home country
5	Record Date	78(2)	At least 4 working days before the record date.	Notice to stock exchange regarding record date.

Obligations of Listed Entity which has Listed its Securitised Debt Instruments

Sl. No.	Compliance	Regulation	Time Period	Event
1	Issue new securities	82(1)	Prior to issue new Securitised Debt Instrument.	its intention to issue new securitized debt instruments either through a public issue or on private placement basis

2	Intimation	82(2)	At least 2 working days before the board meeting excluding date of intimation & date of meeting	the meeting of its board of trustees, at which the recommendation or declaration of issue of securitized debt instruments or any other matter affecting the rights or interests of holders of securitized debt instruments is proposed to be considered
3	Financial Information	82(3)	Within 7 days from the end of month/ actual payment date On monthly basis	submit such statements, reports or information including financial information pertaining to Schemes to stock exchange
4	Record Date	87(2)	At least 7 working days before the record date excluding the date of intimation & record date	Notice to stock exchange/s regarding record date.

DISCLOSURES TO BE MADE AT WEBSITE OF THE COMPANY

It is not mandatory for a private company to maintain a website. In case, the company has maintained a website, then the following disclosures are required to be made at its website:

Section/ Rule	Purpose	Mode
Section 8 and Rule 22 of the Companies (Incorporation) Rules, 2014	Companies registered under section 8 seeking conversion into any other kind	Notice in Form INC-19 shall be published on the website of the Company, if any, and as may be notified or directed by the Central Government.
Section 12 and Rule 26 of the Companies (Incorporation) Rules, 2014	Publication of name by company	Every company which has a website for conducting on line business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/ home page of the said website.
Rule 4(3) of the Companies (Acceptance of Deposits) Rules, 2014	Circular For Inviting Deposits from the public	Every Company inviting deposits from the public shall upload a copy of the circular on its website, if any. In case of private company - Clause (a) to (e) of Sub section 2 of Section 73 shall not apply to Private Companies which accepts from its members monies not exceeding 100%, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified. - Notification No. G.S.R.464 (E) dated 5th June, 2015. The requirement of publishing a circular pursuant to Section 73 (2) (a) also shall not apply in such a case.

Rule 10 of the Companies (Management and Administration) Rules, 2014	Closure of Register of Members or Debenture Holders or other Security Holders	<p>Closure of Register of Members or Debenture Holders or other Security Holders. The company shall publish notice at least seven days prior to such closure as may be specified by SEBI in case of a listed company or intends to get its securities listed on the website as may be notified by the Central Government and on the website, if any, of the Company.</p> <p>Not applicable to a private company if the notice has been served on all members of the private company not less than seven days prior to closure of the register of members or debenture holders or other security holders.</p>
Section 101 & Rule 18(3) (ix) of the Companies (Management and Administration) Rules, 2014	Notice of the General Meeting	<p>The notice of the general meeting of the Company shall be simultaneously placed on the website of the Company and on the website as may be notified by the Central Government.</p> <p>In case of private company - Section 101 shall apply, unless otherwise specified in this section or the articles of the company provide otherwise. - (Notification No. G.S.R. 464(E) dated 5th June, 2015).</p> <p>Section 122 provides that the provisions of section 101 shall not apply to a One Person Company.</p>
Section 110 & Rule 22 (4) & 22 (13) & 22 (16) of the Companies (Management and Administration) Rules, 2014	Postal Ballot	<p>The notice of the postal ballot shall be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members. The results of the postal ballot shall be declared by placing it, along with the scrutinized report, on the website of the company.</p> <p>Note: One Person Company and other companies having members up to 200 are not required to transact any business through postal ballot.</p>
Section 115 & Rule 23(4) of the Companies (Management and Administration) Rules, 2014	Resolutions Requiring Special Notice	Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, such notice shall be posted on the website, if any, of the company.
Section 124(2) Unpaid Dividend Account		The Company shall, within a period of 90 days of making any transfer of an amount under section 124(1) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the Company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Section 135(4) and Rule 9 of the Companies (Corporate Social Responsibility Policy) Rules, 2014	Disclosures about Corporate Social Responsibility Policy (by a company to whom CSR is applicable)	The Board of every Company shall disclose contents of Corporate Social Responsibility Policy in its report and also place it on the Company's website, if any. In case of Specified IFSC Private Company - Section 135 shall not apply for a period of five years from the commencement of business of a Specified IFSC private company (refer Notification No.G.S.R.9(E) Dated 4th January, 2017)
Section 136(1) Right of Member to Copies of Audited Financial Statement		Every company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of its subsidiary on its website, if any.
Section 168 & Rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014	Notice of Resignation of director	The Company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR-12 and post the information on its website, if any.
Section 230(3) & Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016	Advertisement of the notice of the meeting pursuant to exercise of power to Compromise or make arrangements with creditors and members.	The notice of the meeting under section 230(3) of the Act, shall be placed on the website of the company, if any in Form No. CAA.2 at least 30 days before the date fixed for the meeting and in case of listed companies, also on the website of SEBI and recognized stock exchanges where the securities of the company are listed.

Newspaper Advertisements required to be given/ published by the private companies under the provisions of Companies Act, 2013

Section / Rule	Relevant Purpose	Mode
Rule 20(3) of the Companies (Incorporation) Rules, 2014	Application for Grant of License under section 8 by existing company.	The company shall within one week from the date of application, publish a notice in Form No. INC-26 at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.
Section 12(5) read with Rule 28(2) (a) of the Companies (Incorporation) Rules, 2014	Change in registered office from the Jurisdiction of one Registrar to another within the same state.	Publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district.

Section 13(4) read with Rule 30(6) of the Companies (Incorporation) Rules, 2014	Change in registered office from One State or Union Territory to another.	Advertise the application in the Form No.INC.26 in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district at least 14 days before the date of hearing.
Section 73(2)(a) read with Rule 4(1) of the Companies (Acceptance of Deposits) Rules, 2014	Acceptance of Deposits.	<p>Circular in Form DPT-1 may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.</p> <p>In case of private company - Clause 1a) to 1e) of Sub-section 2 of Section 73 shall not apply to Private Companies which accepts from its members monies not exceeding one hundred per cent, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.(Notification No. G.S.R. 464(E) dated 5th June, 2015).</p>
Section 88 (4) read with Rule 7(5) of the Companies (Management and Administration) Rules, 2014	Closure of Foreign Register.	A foreign register shall be open to inspection and may be closed, and extracts may be taken there from and copies thereof may be required, in the same manner, mutatis mutandis, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept
Section 91(1) read with Rule 10(1) of the Companies (Management and Administration) Rules, 2014	Closure of Register of Members or debenture holders, Shareholders or other Security holders.	A company should publish a 7 days prior notice for the closure of the register of members or shareholders or other security holders at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated

Section 103 (2)		<p>If the Quorum is not present within % an hour in respect of meeting of members Such Meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date, time and place as the Board may determine by giving not less than three days notice to the members either individually or by publishing an advertisement 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.</p> <p>In case of private company, Section 103 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise vide Notification No. G.S.R.464(E) dated 5th June, 2015.</p>
Section 108 read with Rule 20(4)(v) of the Companies (Management and Administration) Rules, 2014	Voting through Electronic means	A company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but at least twenty-one days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation, and specifying the matters prescribed in the said sub-rule.
Section 110 read with Rule 22(3) of the Companies (Management and Administration) Rules, 2014	Postal Ballot	An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying the matters prescribed in the said sub-rule.
Section 115 read with Rule 23(4) of the Companies (Management and Administration) Rules, 2014	Resolution requiring Special Notice	Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the state where the registered office of the Company is situated

Section 230(3) read with Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016	Power to compromise or make arrangements with creditors and members	The notice of the meeting under subsection (3) of section 230 of the Act shall be advertised in Form No. CAA.2 in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated, or such newspapers as may be directed by the Tribunal.
--	---	--

LESSON ROUND UP

- The entity wise compliances of the companies categorized as listed company, Public company, Private company, Section 8 company, which is further sub-categorized as One Person company, Small company, Government company.
- The activity wise compliances are the compliances relating to the Business Activities of the company such as Banking Company, Insurance Company, Housing Development Company, IFSC Company, NBFC, Section 8 Company, Producer Company, Chit Fund Company, Plantation Company etc.
- The sector wise compliances includes the various sectors such as Agriculture & Allied Activities, Manufacturing, Construction, Power, Electricity; Gas & Water, Mining & Quarrying, Business Services, Real Estate and Renting, Trading, Community; personal & Social Services, Transport; storage & communications, Finance, Insurance etc.
- For identification of the industries specific compliance, it requires the correlation the business activity of the company and the various sector specific laws applicable to such business activity.

LIST OF FURTHER READINGS

ICSI Publication:

- Guidance note on Secretarial Audit
- FAQs on Companies Act, 2013
- FAQs on Section 8 company
- Ready Reckoner for Private companies
- CS as Corporate Saviour for various Industries

SELF -TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Illustrate the compliance requirement relating to-
 - Signing of the financial statement of the private company
 - Signing of directors report
2. List out the records which are required to be maintained by the LLPs under the LLP Act, 2008.
3. Discuss the various exemption availed to the Section 8 companies under the Companies Act, 2013
4. Describe the procedure for identification of the activity wise compliances, Sector wise compliances and Industry specific compliance in a company.

[illegible]

Lesson 3

Documentation and Maintenance of Records

LESSON OUTLINE

- Introduction
- Purpose of Documentation
- Electronic Repository of Documents
- Physical Repository
- Coding and Nomenclature
- Safety & Retrieval of Records
- Preservation of Records
- Privacy of Records and its control
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Documentation provides a thorough knowledge of the history and the present status of any activity. Thus it provides a historical backgrounds that what has already been done in past and what is yet to be done in future.

Effective documentation provides easy access to the required information on time for the effective and timely utilization of the Information.

This lesson will highlight the importance of the documentation and record maintenance and the principles of the good documentations.

INTRODUCTION

The primary responsibility of a company secretary is to prepare and maintain the secretarial and other records, which are required to be kept by the company and in many cases the role is extended towards creating & execution of the critical corporate records. This requires a good understanding of what documents need to be created, what is the purpose of such documentation, how much details are required to be disclosed in any documents etc.

At the next level of the documentation, it is the duty of the company secretary to ensure the confidentiality of the documents and check whether or not the document requires any further action, also to check whether it is consistent with prior records (in both substance and form), or if it conflicts with corporate policies, may create concerns under existing agreements, may result in a violation of law, or may have tax implications etc.

The Company secretary is also responsible for storing, maintaining, retrieving, certifying, and explaining corporate documents. Many issues are implicated relating to document storage, including the span of time the records need to be retained, ensuring the documents are stored in a safe place, whether documents are backed up, either in hard copy or electronically, and their timely access. A company secretary is often responsible for documents relating to subsidiaries, joint ventures, consortiums, and other entities also, many of which may be at locations other than corporate headquarters, including locations around the world. In such cases the company secretary must consider whether and to what extent, he should rely on local partners in maintaining and creating corporate records, as well as to what extent he or she must exercise oversight. The secretary may also execute documents on behalf of the company and may be involved in maintaining or advising with respect to the corporate website and social media.

PURPOSE OF DOCUMENTATION

Client Service: Documentation is a tool for professionals to serve better to their clients in a timely and effective manner.

Communication: Documentation is the base for better communication between professionals. Clear, complete, accurate and factual documentation provides a reliable, permanent record of client.

Accountability: Documentation demonstrates Professional accountability and records the work of the professional. It may be used in relation to performance management, internal inquiries, regulatory proceedings and/or legal proceedings.

Professional Responsibility: Documentation is an integral part of professional practice and forms the basis for evidence of professional conduct.

Legal Requirement: Professionals are required to make and keep records of their professional work in accordance with practice standards followed and organisational policy. However the laws mandate specific information to be recorded and maintained.

Quality: Documentation may be used to evaluate professional practice in terms of Peer reviews, Quality reviews, audits and accreditation processes, Regulatory inspections or critical incident reviews.

Research: Documentation is a valuable source of data for researchers. It provides information to professional, evaluates client outcomes and is a concise record, essential for accurate research data and evidence based practice.

Resource Management: Accurate and comprehensive documentation is a valuable source of evidence and provide basis for resource management.

Guiding Principles of Good Documentation

The term documentation includes any and all forms of documentation recorded by a person in professional capacity in relation to his professional duties and includes written and electronic records, audio and video tapes, emails, facsimiles, images (photographs and diagrams), charts, check lists, communication books, management reports, incident reports and working notes or any other type or form of documentation. The good documentation promotes good corporate governance practices and compliance level of the company and also improves communication and dissemination of information between and across various stakeholders. These guiding principles support professionals, employers, policy makers and managers in assessment, planning, execution and evaluation. Also the good documentation practices and policies demonstrate the professional obligation, accountability and legal requirement to communicate and record client information and good secretarial practice.

The guiding principles for good documentation are as under:

- Clear
- Concise
- Complete
- Contemporary
- Consecutive
- Correct
- Comprehensive
- Collaborative
- Client Centric
- Confidential

Examples of Poor Documentation Practices

The following are the some of the examples of poor documentations practices:

- Document with errors, correction, not signed/dated, and didn't include a reason for the correction;
- Write-overs, multiple line-through and use of "White-out" or other masking device;
- Recording of events is not in sequence & tabled;
- Standards operating procedures as adopted by the professional is not authorised;
- The delegation of work is not recorded / documented;
- Out-of-specification procedure not detailed enough; flow chart and /or check list not available.

Examples of Good Documentation Practices

The following are the some of the examples of good documentations practices:

- Records should be completed at time of activity or when any action is taken;
- Superseded documents should be retained for a specific period of time;
- Concise, legible, accurate and traceable;
- Picture is worth a thousand words;

- Clear examples;
- Don't assume knowledge.

ELECTRONIC REPOSITORY OF DOCUMENTS

Document management refers to the process of managing and tracking of the documents and records through an electronic or physical source of documents.

In an electronic repository, Document Management Systems (DMS) works by using a computer system and software to store, manage and track electronic documents and electronic images of paper-based information captured through the use of a document scanner.

The term document management system can be defined as the software that controls and organizes documents of an organization. It incorporates document and content capture, workflow, document repositories and output systems, and information retrieval systems. Also, the processes used to track, store and control documents.

Advantages of DMS

- Tracking on check-in/check-out by various officers
- Locking and unlocking of Document
- Simultaneous editing
- Document Version Control
- Roll-back options / Retrieve option
- Ease in Audit trail
- Annotation and Stamps

Advantages of the electronic records

- **Cost Effective:** Storing and maintaining records in digital form is much cheaper than in any other format. With the increase in the technology advancement, the Digital media costs drop every day. Today, digital storage costs a thousandth of what it cost just a few decades ago, so the storage costs are continually dropping for electronic images.
- **Ease of use:** It's very easy to locate and share electronic documents through Computers aid searching now a days the process of filing doesn't exist anymore. The Document management system take care for finding and maintaining Records consistent locations.
- **Labor savings:** The labor required to locate, manage and dispose of electronic documents is almost nil and minimum minuscule. With electronic documents, all the steps like filing collating, stapling etc. can be automated and that labor completely disappears.
- **Search ability:** Electronic documents can be made searchable by doing OCR of a document and make the whole text keyword searchable. That is not possible with paper documents.
- **Portability:** It's very easy to transport electronic documents. No more boxes of records and trucks and semi-trucks to haul records archives. They can easily be stored on a removable hard drive or thumb drive and taken to the courthouse or to the field office.
- **Version tracking:** In case of the version tracking it is very easy with electronic documents, making it easy to see who has made changes to a document, when they made those and what the document looked like before the change. Version tracking and document management in the hard copy world is much more complex and much more costly.

Disadvantage of Electronic records

- **Software risk:** Storing records in an electronic document management system, have a risk that the system being no longer supported by the software company; that the company will cease to exist; and that the documents will be locked in an unsupported system and have to pay conversion costs to recover them. So the person is somewhat at risk to the software vendor that manages the records.
- **Format risk:** When storing the records as an electronic record, A person run the risk of not being able to read them at some point. For example some of the software are become the standard storage format now a days like PDF, JPEG, etc, but there is a risk that Such software will cease to exist, be purchased or no longer support the PDF format, and then it will be difficult in the future to read those PDF documents. Though such software provides to address this with their PDF or archive PDF format, which is supported by software code escrow and other measures that should make it forward and backwards compatible for years and years to come, but it is a risk.
- **Media compatibility:** Some of the documents are stored in floppy disks and that the user knows that there is a document on them. But don't have a floppy disk drive anymore. It require that to maintain those images in a good, viable format, and have to maintain those images on media that the person can still access. Overcoming those problems is always a risk with electronic documents.
- **Reliability:** Paper is an agnostic format. All person need to have is a light source and some eyes to be able to read paper. It's a good idea to have most vital documents imaged, but keeping a paper copy assures that the person have access to them anytime. A person should keep a paper copy of vital documents - deeds, corporate documents—stored in a safe off-site location.
- **Portability:** The portability is an advantage for digital images. It's very easy to misplace or accidentally delete large amounts of data. It's very easy mode for data to duplicated and transported outside of any organization without permission or knowledge. It's very easy for it to be misplaced or corrupted as well. The very properties that make it easy to use, also make it easy to steal and easy to delete if the proper safeguards aren't in place but those safeguards are expensive.
- **Conversion expense:** It's very expensive to convert paper documents to digital images. The amount of labor it takes to prepare documents and analyze them so that they can be identified and indexed correctly is very large.

PHYSICAL REPOSITORY

The term Physical repository refers to a central place where data is stored and maintained. A repository can be a place where multiple databases or files are located for distribution over a network, or a repository can be a location that is directly accessible to the user without having to travel across a network. The comparison between the virtual and Physical data room is illustrated as under:

VIRTUAL AND PHYSICAL DATA ROOM – A COMPARISON

Sl.No.	Particulars	Physical Data Room	Virtual Data Room
1	Form of documents	Papers, files, boxes or other tangible thing	Electronic/Digital/soft copies of documents including video/audio documents
2	Security of documents	Lies with the integrity of person who is in-charge of the data room	More secured through specific log- in id and pass word. In addition facilities like internet fire walls are there.

3	Time required for creation of data room	Longer time required.	Can be created within 48 hours once demands of prospective bidders are identified.
4	Cost	Cost is High because of reasons like- Requirement of one person to take care of data room.	Cost is Low as the documents can be viewed from any location with internet security.
		Requires bidders to travel from their place to the place of location of data room etc	
5	Convenience	searching the documents is time consuming	More convenient as it enables multiple bidders to review documents at the same time with search facility also.
6	Accessibility to data room	Timings to access data may be restricted	Data may be accessed nearly any time.
7	Facility to restrict access of specific document	Difficult to implement any restriction	Access can be restricted.
8	Facility to check who has reviewed what documents and how many times	Not available	Available
9	Facility to highlight new information	To be conveyed manually to all bidders	A highlight can be made in the website created as data room
10	Ability to copy documents	Possible	Not possible always
11	One to one communication with the seller or his representatives	Available	Not available

CODING AND NOMENCLATURE

For naming of any documents Adopting good file naming conventions can help ensure that files will work with different operating systems. Further, the file names can be either self-descriptive or non-descriptive.

The **Descriptive file** names are useful for small, well-defined projects with existing identification schemes that link the digital object to the source material. However, inconsistent application of terms or typos will increase to indexing and sorting errors.

Non-descriptive file names are usually system-generated sequential numerical strings or the system based, such as a digital ID number, combination of Date and time, name of original file and are often linked to meta data stored elsewhere. Non-descriptive file names are often created for large scale digitization projects and may employ a digital ID number and numerical sequences to indicate batch or parent-child relationships. The advantage of non-descriptive names is that there is less chance of repeated or non-unique file names within a data structure.

Some applications and computer scripts could not recognize spaces or process files differently when using spaces. A best practice is to replace spaces in file names with an underline (_) or hyphen (-).

However, the Punctuation, symbols, or special characters (periods, commas, parentheses, ampersands, asterisks, etc.) should be avoided. The following are best practices for file naming.

The File names should:

- Be unique and consistently structured;
- Be persistent and not tied to anything that changes over time or location;
- Limit the character length to no more than 25-35 characters;
- Use leading 0s to facilitate sorting in numerical order if following a numeric scheme “001, 002, 010, 011 ... 100, 101, etc.” instead of “1, 2, ...10, 11 ... 100, 101, etc.”;
- Contain a file format extension;
- Use a period followed by a file extension (for example, .tif, .jpg, .gif, .pdf, .wav, .mpg);
- Use lowercase letters. However, when a name has more than one word, start each word with an uppercase letter for example, “File_Name_Convention_001.doc”;
- Use numbers and/or letters but not characters such as symbols or spaces that could cause complications across operating platforms;
- Use hyphens or underscores instead of spaces;
- Use standard date notation (YYYY-MM-DD or YYYYMMDD);
- Avoid blank spaces anywhere within the character string; and
- Not use an overly complex or lengthy naming scheme that is susceptible to human error during manual input, such as “filenameconventionjoesfinalversioneditedfinal.doc”.

The strength of a folder and file naming convention is dependent on the proposed naming structure and the quality and quantity of the data elements chosen to build it. It should be of no surprise that for any business activity there is always an ideal naming structure. However, any structured naming convention that attempts to be all encompassing may result in overkill and unwieldiness.

The ten basic rules that could serve as a general guideline in structuring folder and file naming are:

1. Avoid extra long folder names and complex hierarchical structures but use information-rich filenames instead.

Dos: D:\ABC\FY\16-17\AR\MGT-7.doc

Don'ts: D:/ Alfa Botanicals Private\ Financial Year\ 2016-2017\Annual Return\ Form MGT-7.doc

Reason: Complex hierarchical folder structures require extra browsing at time of storage and at the time of file retrieval. By having all the essential information concisely in the file name itself, both the search and identification of the file is streamlined and more precise.

2. Put sufficient elements in the structure for easy retrieval and identification but do not overdo it.

Dos: ABC_SearchReport_Invoice 20.07.2018.pdf

Don'ts: ABC_Report_Invoice.pdf

Reason: Precision targeted retrieval requires sufficient elements to avoid ambiguous search results but too much information adds undue effort at file naming time with little or no returns at retrieval time.

3. Use the underscore (_) as element delimiter. Do not use spaces or other characters such as: ! # \$ % & ' @ ^ ` ~ + , . ; =) (

Dos: SMITH-J_AXA_7654-6_POLICY_20120915.pdf || FUJITSU_S1500_SPEC_Scanner.pdf

Don'ts: SMITH-J AXA 7654-6 POLICY 20120915.pdf || FUJITSU \$S1500\$ SPEC\$Scanner.pdf

Reason: The underscore (_) is a quasi standard for field delimiting and is the most visually ergonomic character. Some search tools do not work with spaces and should be especially avoided for internet files. Other characters may be interesting but visually confusing and awkward.

4. Use the hyphen (-) to delimit words within an element or capitalize the first letter of each word within an element.

Dos: Smith-John_AIG_7654-6_POLICY_2009-09-15.pdf || WhitePaper_StructuredFileNameStrategy.doc

Don'ts: Smith John AIG 7654 6 POLICY 2009 09 15.pdf || White Paper Structured file naming strategy.doc

Reason: Spaces are poor visual delimiters and some search tools do not work with spaces. The hyphen (-) is a common word delimiter. Alternatively, capitalizing the words within an element is an efficient method of differentiating words but is harder to read .

5. Elements should be ordered from general to specific detail of importance as much as possible.

Dos: FY2009_Acme-Corp_Q3_TrialBal_20091015_V02.xls || Production_Paint-Shop_WorkOrder_775-2.xls

Don'ts: TrialBal_Q3_20091015_Acme-Corp_V02_FY2009.xls || Paint-Shop_775-2_WorkOrder_Production.xls

Reason: In general the elements should be ordered logically, in the same sequence that you would normally search for a targeted file.

6. The order of importance rule holds true when elements include date and time stamps. Dates should be ordered: YEAR, MONTH, DAY. (e.g. YYYYMMDD, YYYYMMDD, YYYYMM). Time should be ordered: HOUR, MINUTES, SECONDS (HHMMSS).

Dos: RFQ375_Cables-Unlimited_BID_20091015-1655.pdf || 2009-11-20_AMATProj_Phase1_Report.doc

Don'ts: RFQ375_Cables-Unlimited_BID_10152009-1655.pdf || Nov-20-2009_AMATProj_Phase1_Report.doc

Reason: To ensure that files are sorted in proper chronological order the most significant date and time components should appear first followed with the least significant components.

7. Personal names within an element should have family name first followed by first names or initials.

Dos: Tate-Peter_SunLife_1-7566-2_POLICY_10YrTerm.pdf || SmithJ_ID3567_ADMIN_WageReview.xls

Don'ts: Peter-Tate_SunLife_1-7566-2_POLICY_10YearTerm.pdf || JSmith_ID3567_ADMIN_Wage Review.xls

Reason: The family name is the standard reference for retrieving records. Having the family name first will ensure that files are sorted in proper alphabetical order.

8. Abbreviate the content of elements whenever possible.

Dos: RevQC_QST_2009-Q2.xls || MCIM_27643_POD.doc

Don'ts: Minister of Revenue Quebec_Quebec-Sales-Tax_2009-2ndQuarter.xls || MultiCIM-Technologies-Inc_27643_Proof-Of-Delivery.pdf

Reason: Abbreviating helps create concise file names that are easier to read and recognize.

9. An element for version control should start with V followed by at least 2 digits and should be placed as the last most element. To distinguish between working drafts (i.e. minor revisions) use Vx-01->Vx-99 range and for final draft (i.e. major version release) use V1-00-> V9-xx. (where x =0-9)

Do's: MCIM_Proposal_V09.doc || eXadox_UserManual_V1-02.doc

Don'ts: MCIM_Proposal_9.doc || eXadox_UserManual_V2FinalDraft.doc

Reason: The "V" helps denote that the element pertains to a version number. A minimum of 2 digits with a leading zero is required to ensure that search results are properly sorted. The intent is to avoid the situation where for example, a filename with a "V1-13" will wrongly appear before an identical filename with a "V1-2" version number when sorted in ascending alphabetical/numerical order. To distinguish between working, review and final draft a single digit prefix followed by hyphen "-" is preferred to facilitate proper sorting; using words in the file name such as Final, Draft or Review in the filename affect the order and should be avoided.

10. Prefix the names of the pertinent sub-folders to the file name of files that are being shared via email or portable storage devices.

Do's: Prod_PS_AssL7_WO_Suzuki_J3688-20090725.xls || FY2009_Acme-Corp_Q3_TrialBal_20091015_V02.xls

Don'ts: WO_Suzuki_J3688-20090725.xls || Q3_TrialBal_20091015_V02.xls

Reason: Attached files and files shared through portable devices include only the file name and can be totally devoid of the context that is generally provided by the folder structure of origin. To compensate and avoid confusion it is sometimes essential to prefix the name of the subfolder(s) to such file names

CIRCULATION OF DOCUMENTS

In a Company efforts shall be established to control the issuance of documents, such as instructions, procedures, and drawings, including changes thereto, which prescribe all activities affecting quality of the Document & Record. These measures shall assure that documents, including changes, are reviewed for adequacy and approved for release by authorized personnel and are distributed to and used at the location where the prescribed activity is performed. Changes to documents shall be reviewed and approved by the same authority that performed the original review and approval unless the organization designates another responsible Authority.

SAFETY AND RETRIEVAL OF RECORDS

To assure the best quality of documents, it is to be assured that sufficient records are maintained to furnish evidence of the activities affecting quality. The records should incorporate the following:

- **Operating logs :** the names of the individuals who all have worked on the same Documents
- **Results of reviews:** the recording of the changes suggested by the each reviewer and basis of the rejection on Non agreement
- **Inspections:** list of individuals who have access of the records and have inspection rights of the same.
- **Monitoring of work performance :** will ease in the monitoring of work performed by the person to whom the file is shared,
- **Information analyses:** Provide ease in the Information system of the organization and tracking of files.

Records should be identifiable and retrievable and should Consistent with applicable regulatory requirements; the company should comply with requirements concerning record retention, such as duration, location, and assigned responsibility. Every record must be well managed in order to ensure that they are protected for both administrative purposes and to serve as evidence of the organization's work. Records management provides a professional approach to caring for records. The care of records and archives is governed by three key concepts.

(i) Keeping together

The records must be kept together according to the department / Section responsible for their creation or

accumulation, in the original order established at the time of their creation. This gives them their 'evidential' nature and distinguishes them from other kinds of information. It is the basis for retrieving information from records. Knowing who created or used a record, and where, when and why, is the key to retrieval rather than their format, subject matter or content. This is true for paper-based records as well as the electronic records.

(ii) Ensure life cycle

Every records follow a 'life-cycle', in that they are created, used for so long as they have continuing value and then disposed of by destruction or by transfer to an archival institution. Every record pass through three main phases, i.e. current phase, semi-current phase 2 non-current phase

In the current phase, they are used regularly in the conduct of current business and maintained in their place of origin or in the file store of an associated records office or registry.

In the semi-current phase, they are used infrequently in the conduct of current business and are maintained in a records center.

In the non-current phase they are destroyed unless they have a continuing value which merits their preservation as archives in an archival institution. The effective management of records throughout this life-cycle is a key issue in civil service reform.

(iii) Record Preservation

The care of records and archives is that the care should be managed through a coherent and consistent range of actions from the development of record-keeping systems, through the creation and preservation of records to their use as archives.

The concept suggests that four actions continue or reappear throughout the life of a record: i.e., identification of records; intellectual control; provision of access; and physical control. The management of this continuum of actions provides the basis for a strategic approach to records management.

PRESERVATION OF RECORDS

Preservation of records refers to the implementation of strategies that enhance and prolong the useable life of records and archives. Preservation encompasses storage and handling. Responsibility for the preservation of records is vested in the creating office during the active and semi-active phases of the records life-cycle. The other Offices are charged with ensuring accessibility in the short and medium terms. However, where it is evident that records will be required as archives, and to assist the organization in long-term preservation, standards in the storage and handling of records should refer to the long term rather than short or medium terms. Under the provisions of the Companies Act, 2013 and Regulation 9 and 30(8) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 the companies are required to prepare a policy statement relating to the preservation of its documents and archival of documents in the website. The following factors need to be considered in the preparation of the preservation and archival policy of the company.

- Analysis and Restructuring Existing Systems
 - reviewing and revising legislation and policies
 - reviewing and revising organizational policies and structures
 - determining resource requirements, such as facilities and staffing
 - developing strategic and business plans.
- Organizing and Controlling Records
 - building sound record-keeping systems
 - managing the creation, maintenance, and use of files.

- Providing Physical Protection for Records
 - implementing and maintaining preservation measures
 - developing emergency plans to protect records
 - identifying and protecting vital records.
- Managing Records in Records Centers
 - developing and maintaining records center facilities
 - transferring, storing, and retrieving records according to disposal schedules
 - disposing of records as indicated by the schedules.
- Managing Archives
 - acquiring and receiving archives
 - arranging and describing archives according to archival principles
 - providing public access to the archives.
- Supporting and Sustaining the Program
 - promoting records services to the government and the public
 - promoting education for records and archives personnel
 - developing and expanding the records and archives professions.

The model policy on preservation of Documents and archival of documents is as under:

POLICY ON PRESERVATION OF DOCUMENTS AND ARCHIVAL OF DOCUMENTS IN THE WEBSITE

[Under Regulation 9 and 30(8) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]

1. PURPOSE AND SCOPE

1.1 The purpose of this document is to present a policy statement for _____ (Company) regarding preservation of its documents and archival of documents in the website in accordance with the provisions of the Companies Act, 2013 and Regulation 9 and 30(8) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR”).

1.2 The policy is framed for the purpose of systematic identification, categorization, maintenance, review, retention and destruction of documents received or created in the course of business. The policy gives guidelines on how to identify documents that need to be maintained, how long certain documents should be retained, how and when those documents should be disposed of, if no longer needed and how the documents should be accessed and retrieved when they are needed.

2. CLASSIFICATION OF DOCUMENTS TO BE PRESERVED / RETAINED

The Company’s physical and electronic documents shall be classified for the purpose of preservation as follows:

- A. Documents whose preservation shall be permanent in nature;
- B. Documents whose preservation period shall not be less than eight years after completion of the relevant transactions;
- C. Documents whose preservation shall be for a minimum period of three years after completion of the event.

The details of documents for the above three categories are given in the **Annexure**.

3. PRINCIPLE OF RESPONSIBILITY OF EMPLOYEES FOR PRESERVATION OF DOCUMENTS

All the Employees in the permanent rolls of the Company are responsible for taking into account the potential impacts on preservation of the documents in their work area and their decision to retain/preserve or destroy documents pertaining to their area.

4. PERIODICAL REVIEW OF THE POLICY

The Chief Executive Officer of the Company is authorised to periodically review the policy and make such changes as considered necessary.

5. SUSPENSION OF RECORD DISPOSAL IN THE EVENT OF LITIGATION OR CLAIMS

In case the Company is served with any notice for request of documents or any employee becomes aware of a governmental investigation or audit concerning the Company or commencement of any litigation against the Company, any further disposal of documents connected with the matter shall be suspended until such time the investigation / litigation ends.

6. STATUTORY REQUIREMENTS

If as per any other law of land including Information Technology Act, a physical or electronic record should be preserved for a longer period than what has been stipulated in this policy, then the document shall be preserved as per the applicable statutory stipulations.

7. WEB ARCHIVAL POLICY

- 7.1 The Company shall disclose on its website all events or information which has been disclosed to stock exchange(s).
- 7.2 Such disclosures shall be retained on the website of the Company for a minimum period of five years.
- 7.3 At the end of the fifth year the information shall be archived and preserved for a further period of three years.

ANNEXURE

A. Documents whose preservation shall be permanent in nature:

1. Property records including purchase and sale deeds, licences, copyrights, patents & trademarks
2. Corporate Records including Certificate of Incorporation, Common Seal, Minutes of Board, Committee and Shareholders' Meetings, Register of Members and other Statutory Records
3. Personal files of all live employees
4. Any other record as may be decided by the Chief Executive Officer of the Company from time to time.

B. Documents whose preservation period shall not be less than eight years after completion of the relevant transactions:

1. Books of Accounts, Bank Statements and vouchers
2. Filings with Stock Exchanges, Registrar of Companies and other statutory authorities.
3. Payroll Records, Employee deduction authorisations, attendance records, employee medical records, leave records, Pension and retiral related Records, etc.
4. Corporate Social Responsibility Records
5. Sponsorship Projects Records

6. Correspondence and Internal Memoranda
7. Any other record as may be decided by the Chief Executive Officer of the Company from time to time.

C. Documents whose preservation shall be for a minimum period of three years after completion of the event:

1. Tender Documents
2. Lease Deeds and Contracts
3. Legal files
4. Insurance Records including policies and claims
5. All e-mail correspondence, internal & external
6. Documents under Secretarial Standards
 - 6.1 Proof of sending Notice of the meetings of the Board / Committee and General meetings and its delivery
 - 6.2 Proof of sending Agenda and Notes on Agenda and their delivery
 - 6.3 Proof of sending and delivery of the draft of the Resolution
 - 6.4 Proof of sending draft Minutes and its delivery
 - 6.5 Proof of sending signed Minutes and its delivery
7. Any other record as may be decided by the Chief Executive Officer of the Company from time to time.

SETTING UP OF A RECORD ROOM

The Records room must be located at convenient location to the accesses of the record. The record room should be kept separate from other administrative units and should be large enough to house the relevant files. The accommodation must be secure and well maintained, and it must be of strong construction so that it can bear the weight of the records.

Sometimes the Due to the absence of the proper record room, the documents were stored for years in a basement or in an attic which are the worst places to preserve them. The best conditions for conservation of Physical Records are a neat environment, free of dust, with controlled light, humidity and temperature. The following factors should be considered while setting up the Data Room:

Humidity: It's a very important factor. An excess of humidity creates fungus and produces a proliferation of corrosive insects. The lack of humidity, on the other hand, produces brittle and fragile sheets of paper. A controlled humidity between 30% and 40% is the best standard for preservation. With the less possible variation, and the maximum of stability, because variations of humidity provoke more damages than a stable low or medium range.

Temperature: The lower is the temperature, the better is for preservation of Records, However, it is suggested to maintain normal temperature in the record room, which is required for comfortable standard for human beings in public places.

Light: Light has a considerable impact on document's preservation. Not only the visible light to the human eye, but the infrared or ultraviolet radiation, could cause damages. At the environments exposed to the daylight, should be installed curtains with UV filters. Documents exposed to more luminance, should be stored in dark places until its public exposition.

PRIVACY OF RECORD AND ITS CONTROL

The most official communication now a days done electronically and most corporate documents are kept in digital form yet there are plenty of physical data which cannot be circulated electronically and are need to be circulated around various branches and other offices in the form of documents, thumb drives, hard disks or log books. Such physical data needs to be protected and handled responsibly; especially if the data contains personal or confidential information. Just like companies have protocols, firewalls, passwords and other security measures to protect their digital data, they need to put in place the right processes and procedures to ensure their data is secure.

For the managing the confidential and privacy, the first step in the process is to identify what constitutes confidential documents at the workplace, and what to share securely. For any business house the following documents are primarily considered as confidential and need complete privacy:

(i) Customer's & Employees' Information

Safe guarding of the personal data is information about an individual that can be used to identify him/her. Information like Aadhar number, Mobile numbers, Residential addresses, Name, credit card numbers, etc. can all be considered personal information.

In India, by the majority of the business, the strong mechanism for safe guarding the personal information is not yet adopted. Even when the documents or data cease to be useful to the organisation, this doesn't mean that the information is no longer confidential. In such cases the data needs to be disposed of securely and cannot be placed freely on the public platform or mixed with other kinds of data in the office. In such cases the business should work with a trusted information destruction agency to physically destroy both electronic and physical data.

The Customer's & Employees Confidential Information includes discussions about employee relations issues, disciplinary actions, impending layoffs/reductions-in-force, terminations, workplace investigations of employee misconduct, etc.

(ii) Office Plans, Office IDs and Internal Procedure Manuals

For every organisation internal planning & procedures is the key aspect for controlling business and the organisation should ensure the protection of the same. It is important to place the documents with detailed office layouts throughout offices to identify key exits in case of emergency but the other documents and forms related to internal processes and procedures should be kept electronically on secure network drives and encourage employees to limit print-outs.

(iii) Contracts and Commercial Documents and Trade Secretes

In case of the business contracts, every detail of the arrangement should be treated with the utmost confidentiality for both organization itself and the third party's benefit. If the contract has a confidentiality agreement, it could be rendered obsolete if an unauthorised person got their hands on the physical copy of the contract. The contracts are full of commercially sensitive information such as the nature of the arrangement, the value of the services offered/received in the agreement, the names of the main contracting parties, etc.

The business should avoid sharing contracts broadly unless strictly required, and limit physical copies; consider using tools to sign contracts electronically in order to reduce unnecessary print-outs. While these documents are some of the most important to securely store and shared, the easiest and safest way to reduce the risk of a data breach is to implement a secure document retention policy specific to organisation's needs.

The confidential business information as "proprietary information" or "trade secrets." Which is not generally known to the public and would not ordinarily be available to competitors except via illegal or improper means. Common examples of "trade secrets" include manufacturing processes and methods, business plans, financial data, budgets and forecasts, computer programs and data compilation, client/customer lists, ingredient formulas

and recipes, membership or employee lists, supplier lists, etc. “Trade secrets” does not include information that a company voluntarily gives to potential customers, posts on its website, or otherwise freely provides to others outside of the company. If such Confidential information is available in the wrong hands, confidential information can be misused to commit illegal activity (e.g., fraud or discrimination), which can in turn result in costly lawsuits for the Company. The disclosure of sensitive employee and management information can lead to a loss of employee trust, confidence and loyalty. This will almost always result in a loss of productivity.

SUGGESTIVE STEPS FOR PROTECTING CONFIDENTIAL INFORMATION

For every business/organization it is important to have a written confidentiality describing both the type of information considered confidential and the procedures employees must follow for protecting confidential information and dealing with the confidential information's. However the company may adopt the following procedures for protecting confidential information:

- All confidential documents should be stored in locked file cabinets or rooms accessible only to those who are authorized.
- All electronic confidential information should be protected via firewalls, encryption and passwords.
- Employees should clear their desks of any confidential information before going home at the end of the day.
- Employees should refrain from leaving confidential information visible on their computer monitors when they leave their work stations.
- All confidential information, whether contained on written documents or electronically, should be marked as “confidential.”
- All confidential information should be disposed of properly (e.g., employees should not print out a confidential document and then throw it away without shredding it first.)
- Employees should refrain from discussing confidential information in public places.
- Employees should avoid using e-mail to transmit certain sensitive or controversial information.
- Limit the acquisition of confidential client data (e.g., social security numbers, bank accounts, or driver's license numbers) unless it is integral to the business transaction and restrict access on a “need-to-know” basis.
- Before disposing of an old computer, use software programs to wipe out the data contained on the computer or have the hard drive destroyed.

THE DATA (PRIVACY AND PROTECTION) BILL, 2017

The Data (Privacy And Protection) Bill, 2017 is an proposed law to avoid situations like a country-wide hack like in the case of Estonia in 2007 and the recent global ransomware attack ‘WannaCry’ in 2017. Globally, data is being considered the new oil and in the coming years, our international trade and economic relations will depend on the health and bargaining power of the data economy.

The bill intends to provide rights of persons vis-a-vis their own information, as well as procedures for data collection, data processing, reasonable and targeted surveillance, and means of redress in case of breaches and violations.

The bill provides that the collection and processing of data is important, there is an overwhelming need to secure personal data and ensure better security by creating a statutory obligation to safeguard data and individuals. To that effect, this Bill seeks to establish Inter alia, a balance between rights of individuals and legitimate intervention by the State.

The bill seeks to codify and safeguard the right to privacy for all juristic persons in the digital age, balanced with the need for data protection in the interests of national security.

The Justice AP Shah Committee report outlined nine principles that were central to and defined the Right to Privacy.

Principle of Notice: This principle requires a data controller to notify all individuals of its information practices before collecting information from them.

Principle of Choice and Consent: Individuals divulging information must have a choice in the matter, according to this principle. There are two methods of getting the consent of an individual – the opt-in method and the opt-out method. No collection or processing of personal data should take place without consent, with the exception of authorized agencies.

Principle of Collection Limitation: A data controller should collect only as much information as is directly necessary for the purposes identified. The controller should also notify the person giving the information (data subject) through 'lawful' and 'fair' means.

Principle of Purpose Limitation: It requires that the collection or processing of information be restricted to only as much information as is adequate and relevant. It further states that the collection, procession, disclosure, usage of personal information by a data controller should be limited to the purpose notified and consented to the individual by the data controller, and that any change in this purpose must be notified to the individual.

Principle of Access and Correction: This principle requires that data subjects have access to the data held about them, the ability to seek corrections, amendment, or deletion of such data in case of inaccuracy, and the ability to confirm if a data controller is holding any information on them.

Principle of Disclosure of Information: According to this principle, the data subject (person whose information is taken) has the right to privacy in case their personal information is disclosed to a third party.

Principle of Security: This principle requires that a data controller ensure the security of the collected personal information by 'reasonable security standards' to protect from reasonably foreseeable risks. It specifically mentions the following possible dangers: loss, unauthorized access, destruction, use, processing, storage, modification, DE anonymization (a strategy in which anonymous data is cross-referenced to identify the source) and unauthorized disclosure, either accidental or incidental.

Principle of Openness: This principle requires a data controller to make public all the information it can about the practices, procedures, policies and systems that it implements in order to comply with the National Privacy principles.

Principle of Accountability: This principle pins accountability on the data controller to comply with measures that fulfil the other eight principles. It states that such measures should include mechanisms to implement privacy policies. It specifically mentions the following: training and education, external and internal audits, and requiring organizations or overseeing bodies extend all necessary support to the Privacy Commissioner and comply with the Commissioner's orders.

LESSON ROUND UP

- The good documentation promotes good corporate governance practices and compliance level of the company and also improves communication and dissemination of information between and across various stakeholders.
- The General principles for documentation provide that the document should Clear, Concise, Complete, Contemporary, Consecutive, Correct, Comprehensive, Collaborative, Client Centric and should maintain Confidentiality.

- Responsibility for the preservation of records is vested with the creator of the document during the active and semi-active phases of the records life-cycle.
- For any business house the following documents are primarily considered as confidential and need complete privacy i.e. Customer's & Employees' Information; Office Plans, Office IDs and Internal Procedure Manuals; Contracts and Commercial Documents and Trade Secretes.
- The confidential policy should describe the type of information considered confidential and the procedures employees must follow for protecting confidential information and dealing with the confidential information's.
- The objective of the Data (Privacy and Protection) Bill, 2017 is to secure personal data and ensure better security by creating a statutory obligation to safeguard data and individuals.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Before drafting any document, it is the most essential to familiar with the purpose of document. comment?
2. Briefly explain the advantage and disadvantage of the electronic records.
3. Describe the guideline for the naming of the documents.
4. To assure the best quality of documents, the records should maintained of the activities affecting quality of the records. Comment.
5. Describe the nine principles outlined by the Justice AP Shah Committee report on right to privacy.

[illegible]

Lesson 4

Search and Status Report

LESSON OUTLINE

- Introduction
- Purpose and objective of Search & Status Report
- Search Report under Companies Act, 2013
- Search Report under IPR Laws
- Property title Search
- Examination of Documents
- Inspection of Document
- Verification of Documents
- Stock Exchange Search Report
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

A search report provides the history of the company which is based on the records available with the various regulators.

The purpose of search report is to provide comfort to the stakeholder while dealing with the company and to get correct information about the various assets of the company and as well as the status of the company in the records of the Regulators.

After going through this chapter, Student will be able to understand the meaning, nature of search and status report, scope and its importance, legal provisions involved under Companies Act, 2013 relating to creation, modification and satisfaction of charges.

INTRODUCTION

Company as a separate entity has a facility of raising capital for earning large-scale profits, which is normally not within the purview of individual efforts and means. In the past, the companies used to raise money by way of issue of equity or preference shares. However, with the increasing pressure of capital requirements, different and alternative modes of financing were explored and the concept of loan capital came into being.

The loan requirements of a company to be met, had to be raised frequently and also by a number of individuals as in the case of share capital. This brought the concept of *pari passu* ranking. A charge is created when the security on the property of the company is conferred on another person. Where in a transaction for value, both parties evidence an intention that the property existing or future, shall be made available as security, the charge on the property is created.

The Companies Act, 2013 provides for the registration of charge on assets of the Company and the consequences for non-registration. The Charge is to be registered with ROC and once it is registered, a certificate is issued by the Registrar of Companies and that certificate is the conclusive proof that the document creating charge is properly registered under the Companies Act, 2013. Whenever a charge is created on any property of a Company, against any borrowing of the Company, and the same is duly recorded on the MCA website, it acts as a red herring for any prospective acquirer of such property. It intimates the person acquiring the property about the charge so created on the property before acquisition.

Search and Status Report helps lenders to assess the exact position of the Company in terms of compliance and its standing in terms of loan service history. Through these Search and Status Reports, lenders get to know the details of the charges created on the property of the Company and the attendant compliances and registration status with the Registrar of Companies. Foreseeing where the Company would stand if it goes into liquidation at that particular point of time also becomes easy.

The Report, *inter alia*, informs the lenders, about the status of charges held by them vis-à-vis charges, if any held by others. The Search and Status Report acts as a tool to confirm and evidence information and contains information on status of charges. It is basically a report furnished based on the information gathered by a search of specific records made available for inspection in a Public Office or in any other convenient form. It is not merely verbatim reporting of the information as made available but also supplemented by observations/comments by the person who furnishes the report.

As a general practice, banks these days demand Search Reports from companies as a pre-requisite for opening a bank account or giving loans. The Search Report gives master data regarding the Company including its history & details about its directors and an assurance that neither the company nor its directors are defaulters in any of the earlier loans and borrowings. It also evidences the existing charges created on the property of the company. Basically, a report made on the basis of information gathered by a search of specific records is made available for inspection in a public office or in any other convenient form and is supplemented by the comments and inspection done by the person furnishing the report.

PURPOSE AND OBJECTIVE OF SEARCH AND STATUS REPORT

A Search and Status Report traces the history of a Company's property and how it has charged / mortgaged its assets with various Banks/Financial Institutions/Lenders over a period of time, before reaching the present bank that has demanded for the Search and Status Report. A Search and Status Report assists the Bank/ Financial Institution/Lender to evaluate the extent up to which the Company has already borrowed funds and created charges against its movable and/or immovable properties. This information is vital for considering the Company's request for grant of loans and other credit facilities.

The Search and Status Reports of a Company enable Banks / Financial Institutions / Lenders / Investors in making their lending and investment decisions. They also give an overview to such Lenders / Investors on the

control and management of the Company and help them in deciding whether or not to enter into a lending / investment contract with the Company.

Therefore, the main objective of a Search and Status Report is to help Lenders and Investors take an informed decision. It gives Lenders/Investors an insight into the Company, through its history & provides all the necessary details of the Company and its directors as well as the credit history of the company and its directors. It helps Lenders and Investors to take rational decisions on the quantum of loan/investment, sufficiency of security and its nature and other such requirements. As the Report provides historical information about the past charges created in favor of earlier lenders, it enables new Lenders / Investors to assess the exact position of the company and to foresee where they would stand, if the company were to get into liquidation. Thus, such Search and Status Reports act as a basis for Lenders / Investors to take correct lending / investment decisions.

SEARCH AND STATUS REPORT

The Search and Status Report is not merely verbatim reporting of the information as made available but also, supplemented by observations/comments by the Company Secretary or such other professional who furnishes the Report. It has two facets. The first being 'search' involving physical inspection of documents and the second activity 'status' which comprises of reporting of the information as made available by the search. Thus, it acts as a 'Progress Report' of the company and gives ready reference to the exact situation.

SCOPE AND IMPORTANCE

The scope of Search and Status report depends upon the requirements of the Bank/Financial Institution/Lender/Investor concerned. A Search and Status report prepared by a Company Secretary in Practice helps Banks/Financial Institutions/Lenders/Investors to take conscious decision regarding the quantum of loan/ credit facility to be sanctioned and investment to be made. It also helps in taking an informed and speedy decision assuring the credit- worthiness or otherwise of the company. Search and Status Report is mainly beneficial for following entities.

1. **By Banks:** Search and Status Report are basic tools for banks to know the viability of their customer who approach the bank for Cash Credit Limits, Term Loans or otherwise. The sole motto of banks is to provide loans against interest. Hence, knowing the current position of the assets being pledged by the companies become important and the only way to know whether such property is already pledged to some other bank or not is the Search Report. The following basic information about the existing loans taken by the Company is given by the Company Secretary through such reports:
 - (i) The date of loan taken by the company and the charge created in such respect
 - (ii) The name and address of the charge holders
 - (iii) The type of charge i.e. whether joint charge or consortium charge
 - (iv) The amount of loan
 - (v) The property charged / pledged against such loan
 - (vi) The terms and conditions of such loan i.e. rate of interest, terms of repayment, margin money and extent of operation.
2. **By Directors:** An individual before becoming the Director of the Company may get the Search Report prepared from a Professional for following reasons:
 - (i) To know the present directors of the company.
 - (ii) To know the assets and liabilities of the company.
 - (iii) To know the complete history as per ROC records since incorporation.

3. **By Shareholders:** Shareholders may also demand the Search Report of the company for the following reasons:
 - (i) To know the status of the company.
 - (ii) To know the status of their shares held in the company i.e. how many shares they are holding, on which date their shares were transferred, from whom the shares were transferred.
 - (iii) To know the Directors of the company.
 - (vi) To know the complete history as per ROC records since incorporation
4. **Government Authorities:** Government Authorities like Income Tax Authorities, RBI, SEBI etc. can also get the Search Report prepared discerning the present status of the Company and various other financials filed by the company with the concerned Registrar of Companies.
5. **Customers and Suppliers:** Before entering into any agreement/ contract with the company, the suppliers or the Customers get the Search Report prepared.

SEARCH OF CHARGES REGISTERED UNDER COMPANIES ACT, 2013

Section 77(1) provides that it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such Form CHG-1 (for other than debentures) or Form CHG-9 (for debentures including rectification), on payment of such fees and in such manner as may be prescribed in the Rules, with the Registrar within 30 days of its creation.

The Registrar may, on an application by the company, allow such registration to be made

Provided that the Registrar may, on an application by the company, allow such registration to be made

- (a) in case of charges created before the commencement of the Companies (Amendment) Ordinance, 2018, within a period of three hundred days of such creation; or
- (b) in case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2018, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified

- (a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2018, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
- (b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such *advalorem* fees as may be prescribed.

within a period of three hundred days of such creation on payment of such additional fees. The application for delay shall be made in Form CHG-1 and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

The Central Government on being satisfied that —

- (a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or

- (b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.

Section 77(2) of the Act states that when a charge is registered with the Registrar under section 77(1), he shall issue a certificate of registration of such charge in Form CHG-2 and for registration of modification of Charge in Form CHG-3, to the person in whose favour the charge is created.

Further, the Act provides that no charge created by the company shall be taken into account by the liquidator or any other creditor unless it is duly registered a certificate of registration of such charge is given by the Registrar. However this does not prejudice any contract or obligation for the repayment of the money secured by a charge. [Section 77(3) & (2)]

According to Section 82 the company shall give intimation to the Registrar of the payment or satisfaction in full of any charge within a period of 30 days from the date of such payment or satisfaction in Form CHG-4 along with the fee.

The Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees.

Transaction Requiring Charge Registration

Every company creating a charge has to register the particulars of the charge signed by the company and the charge-holder together with the instrument, when:

- the company is acquiring any property or assets whether tangible or not, which are subject to any charge;
- a charge is created within or outside India, any of its undertakings;
- there is any modification in the terms or conditions or the extent or operation of any charge already registered;
- there are charges on properties which are created or acquired by any foreign company.

Every company has to keep at its registered office a register of charges in form CHG-7, which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings.

SEARCH REPORT UNDER THE COMPANIES ACT, 2013

A Search and Status Report as is apparent from, its name contains two aspects. The first being 'search' which involves physical inspection of documents and the second activity 'status' which comprises of reporting of the information as made available by the search.

Thus a search and status report de facto acts as a 'Status Report' on the legal aspects and also a ready reckoner of the exact position of the company on the affairs of the company. In general the Scope of Search report is according to the requirement and purpose of the Report. While issuing the ROC Search report the following process is performed by the professionals.

(a) Examination of documents Registered on MCA 21 portal

The MCA website provides many information relating to the Company. Some information are available without payment of fees like Name of the Company, CIN, Authorised and paid up capital, Name and address of the Directors etc. The website also provides for the viewing of document by public on payment of requisite fee. Public documents include the following:

- a. Incorporation documents
- b. Certificates, including Incorporation certificate and Charge creation, modification and satisfaction certificates.
- c. Charge documents,
- d. annual returns and balance sheet,
- e. change in directors and other e-forms

However, there are certain documents which are not allowed for public inspection. For example, no person shall be entitled to inspect or obtain copies of the resolutions filed under section 179(3) and rules made thereunder.

MCA-21 offers the facility to view documents and also search and other facilities of public documents. This facility is handy for users and banks and financial institutions while sanctioning loans. This facility enables viewing of public documents of companies for which payment has been made by user. The document can be viewed only within 7 days after the payment has been confirmed. Also, the documents are available for only 3 hours after the user has started viewing the first document of the company-

- (a) User has to access My MCA portal and login to the My MCA portal.
- (b) Click on the 'My Documents' tab after logging into the system.
- (c) List of company names will be displayed, for which user have already paid for public viewing. It also displays
 - (i) Date of request i.e. the date, when user made the request to view the company document.
 - (ii) Status of the request i.e. whether viewed or to view.
- (d) Click on the view link under status field.
- (e) The documents are grouped under five categories i.e. user has to click on the desired category under which the document falls.
- (f) If more than one document is listed, the user can arrange them name wise or date wise.
- (g) On clicking the document name, the document shall be displayed for viewing.

The public documents under this facility are available for viewing by public on payment of requisite fee.

(b) Inspection of Various Documents maintained by the company:

According to the scope of the Search report, the professional should go through the various documents required for the purpose of the report, some the documents which may require are as under:

- Various clauses of Memorandum and Articles of Association
- Forms filed with the Registrar of Companies with receipts.
- All statutory registers.
- Verification of financial statement along with notes to accounts and Auditor Report. .

- Report of Internal Auditor.
- Copies of contracts made between the company and any of the related parties
- Transfer and Transmission of Share.
- Instruments creating, modifying or satisfying charges.
- Various Disclosures from Directors
- Related Party Transactions.
- Corporate Social Responsibility (CSR)
- Directors and Key Managerial Personnel (KMP)

(c) Cross Verification of Documents from the MCA Records

Some financial institutions require a Report by Company Secretaries in Practice, on certain additional points relevant and important for them. A separate Report can be given after inspecting or verifying the documents and records available with the Registrar and/or the company. The points normally covered under such Report are:

S.No	Item	Records to be verified
1	Name of the Company	Memorandum of Association Certificate of Incorporation or Fresh Certificate of Incorporation/Change of Name.
2	Date of Incorporation	Certificate of Incorporation
3	Company Number/Corporate Identity Number	Certificate of Incorporation/Fresh Certificate upon change of name/ Certificate of registration of *CLB Order for shifting registered office to another State
4	Address of Registered Office	INC-22, MGT-14 Resolution(s) of Board/ General Body, INC-28 with copy of NCLT Order.
5	Name and address of present directors (with their date of joining)	Articles of Association, DIR-12, Register of Directors
6	Authorized Share Capital of the company divided into _____ Shares of Rs. _____ each	Memorandum of Association, SH-7, MGT-14
7	Paid-up Capital of the company divided into _____ Shares of Rs. _____ each	MGT-14, PAS-3, Register of Members, Annual Return
8	List of Members with details as to shares held by each of them. The names of directors to be specifically mentioned in such list of shareholders (List of members holding shares of a specified monetary threshold is also asked for in some cases).	PAS-3, Annual Return, Register of Members, Register of Directors.

9	Provision in the Articles of Association as to affixation of common seal of the company. (Particulars as to the persons in whose presence the seal of the company can be affixed to any deed).	Articles of Association. If there is no specific cause and the Articles have adopted Table F, Clause 79 of Table F of Schedule-I of Companies Act, 2013 may be referred.
10	Main Objects of the company.	Memorandum of Association
11	Whether the Articles of the company contains provisions for nomination by the corporation a director on the board of the company.	Articles of Association of the company

Note: If capital is raised other than by cash, it should be shown separately).

Apart from the above, the master data available at the MCA portal can be resorted to mere reproduction of the particulars of charges in form of Search and Status Report is not sufficient. It also requires:

- A thorough study of the particulars relating to the amount secured by the charge and the terms and conditions governing the charge.
- An analysis of the security available to a particular lender for its advances.
- A comparison of charges created in favour of a particular lender vis-à-vis other lenders.

In other words, it does not necessary mean verbatim reporting of the information as made available but also supplemented by observations/comments by the person who furnishes the Report. In nutshell, while providing search report the following factor should be taken care by the professional:

- The Search and Status Report should give exact details of particulars of charges/modifications/satisfactions as effected, filed and registered from time to time.
- Identify those charges and modification of charges, which have been created in favour of a particular lender.
- Take the particulars of the documents creating the charge as specified in CHG-1 and CHG-9 under the Companies Act, 2013 or Form 8 under the Companies Act, 1956
- Ascertain as to whether the amount secured by the charge as per the documents executed has been duly mentioned.
- Ascertain as to whether 'properties' offered as security are mentioned as per the documents creating the charge and attached with the Forms and verify whether they are as per the terms of Sanction.
- Check whether the terms and conditions governing the charge have been mentioned.
- Ascertain whether the name of the lender is properly mentioned.
- In case of modification of charge ascertain whether the names of documents effecting the modification are mentioned and whether the particulars of modification are clearly mentioned.
- In case of charge, the particulars of documents attached with forms, amount secured by the charge as per the documents and/or sanction ticket, the properties/assets secured by the charge, the terms and conditions governing the charge and the name of the lender is properly mentioned in the relevant columns of Form CHG-1.

Further, a Search and Status Report should always be supported by expert observations on the charges created by the borrower in respect of the subject lender. It is necessary to peruse the observations/comments offered and the same should be read in conjunction with the Report. The observations/comments of the experts/

professional (company secretary in practice) will certainly help to throw additional light on certain points which would have missed the attention of the “lenders” when the Form CHG-1 was presented before them for signature.

(d) Compilation and Preparation of Search Report

Search Report compiled on the basis of the scrutiny of the above documents is, therefore, related and restricted to only those documents which are available for the inspection on the date(s) when the search is carried out.

An index of the charges is prepared at the website of MCA. This index provides, charge ID, the date of filing of the document charge amount secured, name of charge holder and its address. In order to view index of charges, it is primarily necessary to quote CIN/FCRN of the company. This number will primarily be available at the website of the ministry.

It is advisable to note down from the index, the short particulars of all Form CHG-1, 4, 9 for the purpose of cross-checking and ensuring that no document is missed in the Search Report.

Also, it would be advisable to mention in the Search Report by way of a footnote as to what was the last document which was available for inspection when the scrutiny was taken/completed. This information can be helpful in identifying the forms and based on which the Search Report is given.

(e) Format of Search Report and its Preparation

Some of the banks and financial institutions insist that the Search Report be given in their own format. It would, therefore, be advisable to know if any specific format is insisted upon by the client.

SEARCH REPORT UNDER IPR LAWS

The World Intellectual Property Organization (“WIPO”) refers to Intellectual Property (IP) as the creations of the mind, inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Intellectual property is divided into two categories:

- (i) Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and
- (ii) Copyright, which includes literary, artistic, dramatic and musical works such as novels, poems, lyrics, plays, films, drawings, paintings, photographs, etc. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

While preparing the Search and Status Report, it is important for professionals to conduct due diligence of the intellectual property rights, as tremendous worth is associated with the intangible assets of the business.

During any corporate transaction, which involves acquiring a business or a stake, the acquirer conducts due diligence of the targets’ assets and liabilities. With the help of an appropriate due diligence exercise, the acquirer weighs the assets, liabilities and potential risks associated with the transaction.

This process involves analysing intangible assets of a business, checking valid intellectual property rights subsisting therein, scope of their protection, analyzing the risks involved with respect thereto and in turn, assessing their potential value.

Procedure for Search Report under IPR Laws

1. **Preparing checklist:** The checklist should contain a list of information required to understand the company’s business and its existing protected and protectable IP rights, namely;
 - questions on registered and pending applications for patent and design rights;
 - information regarding brand identities, whether registered, applied for, merely used or created;

- details on the proprietorship aspects from the target.
2. **Segregating the IP assets relevant for the transaction from irrelevant ones:** This activity should be done as soon as the preliminary perusal of the target's business assets is done. Also, at times, there could be associated and/or supplementary IP rights involved in addition to the main IP rights. Hence, it is important to connect such additional IP rights with the main IP rights for the transaction.
 3. **Analysing all documents carefully :** This activity is important as it helps in analysing the nature of documents, whether they are registration documents or agreements in the nature of licensing and franchising agreements, consultancy agreements, technology transfer agreements, other contracts where IP clauses are included, like joint venture agreements, master services agreements, employment agreements, etc.
 4. **Verifying facts and confirm that the information is correct:** This activity is important to verify the legality of documents. It is not prudent to merely rely on all details without cross-checking the same from other available sources, like, from public records of the IP Offices and Google database.
 5. **Analyzing protected and protectable IP rights:** After receiving full information/ documents, IP rights, already subsisting or potential ones is required to be analyzed. Status check, validity check, ownership check, claim check and conflict check should be conducted in a proper manner.
 6. **Drafting of status and search report:** The final report should contain all the observations in relation to IP rights that would be the part of the transaction, before the prospective buyer / investor. It should also contain all the associated risks and liabilities along with strategies to deal with such issues which will help the prospective buyer / investor understand the pros and cons of the transaction.

Key areas to be analysed while preparing the search and status report relating to IPR:

- (i) What domestic and foreign patents (and patents pending) does the company have?
- (ii) Has the company taken appropriate steps to protect its intellectual property (including confidentiality and invention assignment agreements with current and former employees and consultants)?
- (iii) Are there any material exceptions from such assignments (rights preserved by employees and consultants)?
- (iv) What registered and common law trademarks and service marks does the company have?
- (v) What copyrighted products and materials are used, controlled, or owned by the company?
- (vi) Does the company's business depend on the maintenance of any trade secrets, and if so what steps has the company taken to preserve their secrecy?
- (vii) Is the company infringing on (or has the company infringed on) the intellectual property rights of any third party, and are any third parties infringing on (or have third parties infringed on) the company's intellectual property rights?
- (viii) Is the company involved in any intellectual property litigation or other disputes (patent litigation can be very expensive), or received any offers to license or demand letters from third parties?

PROPERTY TITLE SEARCH

A Property Title Search is the process of retrieving the history of a property right from the original owner of the property to the current owner over a period of time. It provides documents which help determine relevant interests in property of the owner and other individuals, if any.

It is usually prepared by an Expert, who after visiting the Registrar's office and inspecting the property documents, issues a title certificate.

It is mandatory for a developer to annex a copy of the report in the 'agreement to sell' with the intended purchaser. This document will state if there is any existing mortgage, litigation, condition or claim, which is likely to affect the title of the buyer adversely. In the same way, a bank is also assured of the title of the property. Banks usually do not finance an encumbered property or one under legal dispute because it reduces its security and increases risk exposure. In order to avail a housing loan, one of the preconditions is that the title of the property should be clear and marketable.

Property Title Search includes:

1. **Ownership:** Status of ownership- sole or joint and the documents stating the same.
2. **Deed Copy:** Recent deeds in respect to the property.
3. **Legal Description:** Description of the property in legal parlance.
4. **Chain documents:** Previous owner of the property.
5. **Possession:** Actual Possession of the property.
6. **Right of way:** Easementary Right - the Right of way given to the owner.
7. **Leases:** Leases on the property which can affect the property status.
8. **Mortgage:** Whether the property has been mortgaged or not?
9. **Tax Payment:** Details of tax payment in relation to the property.
10. **Bankruptcy Search:** Report of bankruptcy of the owner of the property.
11. **Municipal Service Lien:** Report of unpaid municipal dues like water, sewer, trash etc.
12. **Property Restriction:** Restriction on sale of property like sale in case of unsound owner.
13. **Plot Map:** Official copy of Map of the plot.
14. **Property Zoning:** Property lying under which zone like Ecological Zone, Flood Zone, Earthquake Zone etc.
15. **Civil Court Record:** Any order of the Civil Court against the property.

and other things like Spousal Support Lien Search, Child Support Lien search, Power of Attorney, Special Assessment etc.

EXAMINATION OF DOCUMENTS FROM REGULATORS WEBSITE

Examination, Verification and Compilation of Data Published by MCA 21, SEBI, RBI, Stock Exchange, Other Regulators/ Authorities/ Websites and Other Sources.

Prior to the launch of MCA-21, documents filed in the office of the ROC from time to time were taken-up for examination according to the date of filing. However, after the launch of MCA -21, it offers the facility to view documents and also search and other facilities of public documents. This facility is handy for users and Banks and Financial institutions while sanctioning loans.

The general process to do inspection of public documents on MCA21 is as under:

- (a) User has to access My MCA portal and login to the My MCA portal.
- (b) Click on the 'My Documents' tab after logging into the system.
- (c) List of company names will be displayed, for which user have already paid for public viewing. It also displays:

- (i) Date of request i.e. the date, when user made the request to view the company document.
- (ii) Status of the request i.e. whether viewed or to view.
- (d) Click on the view link under status field.
- (e) The documents are grouped under five categories, user has to click on the desired category under which the document falls.
- (f) If more than one document is listed, the user can arrange them name wise or date wise.
- (g) On clicking on the document name, the document shall be displayed for viewing.

This facility enables viewing of public documents of companies which includes incorporation documents, charge documents, annual returns and balance sheet, change in directors and other documents on payment of requisite fee by the user. The document can be viewed only within 7 days after the payment has been confirmed. Also, the documents are available for only 3 hours after the user has started viewing the first document of the company.

INSPECTION OF REGISTER OF CHARGES

As per Section 85 of the Companies Act, 2013, every company is mandatorily required to keep at its registered office, a register of charges in Form No. CHG-7 which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed in the Rules.

Further, it is also required to keep a copy of the instrument creating the charge at the registered office of the company along with the register of charges. The register of charges and instrument of charges, kept under section 85 shall be open for inspection during business hours –

- (a) By any member or creditor without any payment of fees; or
- (b) By any other person on payment of such fees as may be prescribed, subject to such reasonable restrictions as the company may, by its articles, impose.

VERIFICATION OF DOCUMENTS

A Company Secretary in Practice should confirm from the concerned Bank/Financial Institution or the client before proceeding with the inspection about their preference of any specific format for the Search and Status Report.

As per Rule 3(4) of the Companies (Registration of Charge) Rules, 2014, a copy of every instrument evidencing any creation or modification of charge required to be filed with the Registrar in pursuance of Section 77, 78 or 79 of the Companies Act, 2013 should be verified in the following manner:

- a) where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;
- b) where the instrument or deed relates, whether wholly or partly, to the property situated in India, the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

The following particulars are required to be netted from the Register of Charges:

- (i) Date of registration (preferably with the serial number) of the document
- (ii) Date and nature of the document creating the charge

- (iii) Amount of the charge
- (iv) Brief particulars of the property charged
- (v) Name and address of the person in whose favour the charge is created.

Further, the modifications in respect to the charges which have effected from time to time are required to be identified and noted in chronological order in following manner:

- (i) Date of registration of the document (preferably with the serial number)
- (ii) Nature and date of the instrument modifying the charge
- (iii) Effect of Modification.

With regard to the satisfaction of charge, the following particulars are required to be noted chronologically after cross- checking that the charge has been fully satisfied:

- (i) Date of registration (preferably with the serial number) of the document
- (ii) Date of satisfaction.

The gist of points which are normally covered under the Search and Status Report is tabulated hereunder for ready reference:

Sl. No.	Items	Record To Be Verified
(a)	Name of the Company	Memorandum of Association, Certificate of Incorporation or Fresh Certificate of Incorporation/ Change of Name.
(b)	Date of Incorporation	Certificate of Incorporation.
(c)	Company Number/Corporate Identity Number	Certificate of Incorporation/Fresh Certificate upon change of name/ Certificate of Registration, CLB Order/NCLT Order for shifting registered office to another State.
(d)	Address of Registered Office	INC-22, MGT-14 Resolution(s) of Board/ General Body, INC-28 with copy of CLB/NCLT Order.
(e)	Name and address of present directors (with their date of joining)	Articles of Association, DIR-12, Register of Directors.
(f)	Authorized Share Capital of the company divided into_____ Shares of Rs._____ each	Memorandum of Association, SH-7, MGT-14
(g)	Paid-up Capital of the company divided into_____ Shares of Rs._____ each	MGT-14, PAS-3, Register of Members, Accounts Ledger
(h)	List of Members with details as to shares held by each of them. The names of directors to be specifically mentioned in such list of shareholders (List of members holding shares of a specified monetary threshold is also asked for in some cases).	PAS-3, Annual Return, Register of Members, Register of Directors.

(i)	Provision in the Articles of Association as to affixation of common seal of the company. (Particulars as to the persons in whose presence the seal of the company can be affixed to any deed).	Articles of Association. If there is no specific clause and the Articles have adopted Table F, Clause 79 of Table F may be referred.
(j)	Main Objects of the company	Memorandum of Association
(k)	Whether the Articles of the company contains provisions for nomination by the corporation a director on the board of the company.	Articles of Association of the company.

Further, a Search and Status Report should always be supported by expert observations on the charges created by the borrower in respect of the subject lender. It is necessary to peruse the observations/comments offered and the same should be read in conjunction with the Report.

COMPILATION OF INFORMATION GATHERED THROUGH EXAMINATION AND VERIFICATION OF DOCUMENTS

A Search and Status Report is required to be compiled on the basis of the scrutiny of all the available documents during inspection on the date when the search was carried out. An index of the charges is prepared at the website of MCA which provides, charge ID, the date of filing of the document, charge amount secured, name of charge holder and its address. The index of charges can be viewed by quoting CIN/FCRN of the company which is primarily available at the website of the ministry. It is advisable to note down from the index, the short particulars of all Form CHG-1, 4, 9 for the purpose of cross-checking and ensuring that no document is missed in the Search Report.

FORMAT OF SEARCH REPORT AND ITS PREPARATION BASIS

Some of the banks and financial institutions insist that the Search Report be given in their own format. It would, therefore, be advisable to know if any specific format is insisted upon by the client. In the absence of any specific format, the Search Report may be given in the format given at **Annexure 1** explained with the help of a case study for better understanding.

The following table depicts the manner of verifying **Forms CHG 1/4/9** relating to charges:

TABLE A
Charges Requiring Registration

S.No.	Relevant Provisions	Charges under Reference	Instruments	To Verify whether or not
1.	Section 77 of the Companies Act, 2013	(a) a charge for the purpose of securing any issue of debentures	(a) hypothecation or mortgage including floating charge	*The instrument is executed and is dated.
		(b) a charge on uncalled share capital of the company	(b) Deed of assignment	*The common seal is affixed and if yes, the authority thereof is mentioned.

		(c) a charge on any immovable property, where-ever situated, or any interest therein	(c) Mortgage	*The instrument bears adequate stamps in accordance with the applicable Stamp Act
		(d) a charge on any book debts of the company	(d) Hypothecation	The instrument creates the charge specifying the amount of charge and the assets charged.
		(e) a charge, not being a pledge, on any movable property of the company	(e) Hypothecation	*The instrument modifying a charge refers to the original charge under modification and spells the extent of modification.
		(f) a floating charge on the undertaking or any property of the company including stock-in-trade	(f) Hypothecation	*The instrument bears names of the persons in whose favour the charge is created or modified.
		(g) a charge on calls made but not paid	(g) Deed of assignment	*The instrument contains the terms relating to (a) mode of repayment, (b) applicable rate/s of interest, (c) margin and (d) priority or precedence of charge/s.
		(h) a charge on a ship or any share in ship	(h) Hypothecation	
		(i) a charge on goodwill, or on a patent or a license under a patent, or on a trademark, or on a copyright, or a license under a copyright	(i) Deed of assignment	
2.	Section 79 of the Companies Act, 2013	Charges on properties acquired subject to any charge thereon	Relevant instrument and also the instrument, evidencing the acquisition of the property which is subject to charge.	

*The instrument bears adequate stamps in accordance with the applicable Stamp Act.

TABLE B
Time for Filing Forms

S. No.	Event	Relevant provisions	Time limit	Effect
1.	Creation of charge or modification of charge or acquisition of property which is subject to charge	Sections 77 and 79 of the Act.	<p>Within thirty days from the date of creation, modification or acquisition</p> <p>And, within 300 days in case the Registrar on being satisfied that the company had sufficient cause for not filing the particulars within 30 days</p>	<p>The date when the event takes place is also included while calculating the limit</p> <p>With the additional fees and on condonation of delay by the Registrar</p>
2.	Satisfaction of the charge.	Section 82 of the Act.	<p>Within a period of thirty days from the date of satisfaction</p> <p>As per the Amendment Act, the Registrar of Companies may, on an application by the Company or charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction.</p>	<p>The date when the event takes place is to be excluded while calculating thirty days</p>

SEARCH REPORT UNDER SEBI, RBI, STOCK EXCHANGES

The Securities and Exchange Board of India ("SEBI") is the designated regulatory body for finance and investment markets in India. The Board plays a vital role in maintaining stable and efficient financial and investment markets by creating and enforcing effective regulation in India's financial marketplace. While preparing the Search and Status Report, it is important for professionals to conduct due diligence of documents in relation to listed companies which are available in public domain on the SEBI website. This process involves analysing documents which are related to various transactions undertaken by the listed company be it public issue, right issue, debt offer, takeover, mutual funding, buy back and Public issue.

Procedure:

1. Preparing checklist: The checklist should contain list of information required to understand the company's business and the listing details and the transactions undertaken
2. Analysing all documents carefully: This activity is important as it helps to analyse the nature of documents, whether all the documents are available with regard to transactions viz. public issue, right issue, debt offer, takeover etc.

3. Verifying facts and confirm that the information is correct: This activity is important to verify the legality of documents.
4. Drafting of status and search report: The final report should contain all observations in relation to transaction undertaken by the company, before the prospective buyer / investor. It should also contain all associated risks and liabilities along with strategies to deal with such issues which will help the prospective buyer / investor understand the pros and cons of the transaction.

Key documents to be analysed while preparing the search and status report relating to the transactions undertaken by the company:

1. In case of Public Issues -

- (a) Draft Offer Documents filed with SEBI
- (b) Red Herring Documents filed with SEBI
- (c) Final Offer Documents filed with SEBI

‘Offer document’ is a document which contains all relevant information about the company, promoters, projects, financial details, objects of raising the money, forms of the issue etc. used for inviting subscription to the issue being made by the issuer. Offer document is called ‘Prospectus’ in case of a public issue and letter of offer in case of rights issue.

‘Red Herring Prospectus’ is a prospectus, which does not have details of either price or number of shares being offered, or the amount of issue. This means that in case price is not disclosed, the number of shares and the upper and lower price bands are disclosed.

2. In case of Right Issues -

- (a) Draft Letters of Offer filed with SEBI
- (b) Final Letters of Offer filed with Stock Exchanges

3. In case of Debt Offer Document -

- (a) Draft filed with SE
- (b) Final filed with ROC

4. In case of Takeovers -

- (a) Letter of Offer
- (b) Formats as per SEBI (SAST) Regulations 2011
- (c) Other Documents

5. In case of Mutual Funds -

- (a) Draft document
- (b) Statement of Additional Information (SAI)
- (c) Scheme Information Document (SID)
- (d) Key Information Memorandum (KIM)

6. In case of Buybacks -

- (a) Tender Offers
- (b) Open Market through Stock Exchanges

7. In case of InvIT Public Issues -

- (a) Draft offer documents filed with SEBI
- (b) Offer Documents fled with SEBI
- (c) Final Offer Documents fled with SEBI

8. In case of InvIT Private Issues -

- (a) Placement Memorandum filed with SEBI
- (b) Final Placement Memorandum filed with SEBI

STOCK EXCHANGES SEARCH REPORT

The National Stock Exchange (NSE) is the leading stock exchange in India and the fourth largest in the world by equity trading volume in 2015, according to World Federation of Exchanges (WFE). It began operations in 1994 and is ranked as the largest stock exchange in India in terms of total and average daily turnover for equity shares every year since 1995, based on annual reports of SEBI.

The Bombay Stock Exchange (BSE) is the first and largest securities market in India and was established in 1875 as the Native Share and Stock Brokers' Association. Based in Mumbai, India, the BSE lists close to 6,000 companies and is one of the largest exchanges in the world, along with the New York Stock Exchange (NYSE), NASDAQ, London Stock Exchange Group, Japan Exchange Group, and Shanghai Stock Exchange.

While preparing the Search and Status Report regarding Stock Exchanges, it is important for the professionals to conduct due diligence of the documents available in public domain on the NSE and BSE website in relation to the listed companies.

Procedure:

- 1. Preparing checklist:** The checklist should contain list of information required to understand the company's business, listing details, board meetings, results calendar, corporate actions, financial results, shareholding data, pledge data, scheme of arrangement etc.
- 2. Analysing all documents carefully :** This activity is important as it helps to analyse the nature of documents which are available on public domain with respect to listing details, corporate actions, public notices, financial resultants, XBRL, sustainability reports, disclosures, offer document etc.
- 3. Verifying facts and confirm that the information is correct:** This activity is important to verify the legality of documents or information.
- 4. Drafting of status and search report:** The final report should contain all observations based on the information available, before the prospective buyer / investor. It should also contain all associated risks and liabilities along with strategies to deal with such issues which would help the prospective buyer / investor understand the pros and cons of the transaction.

Key documents to be analysed while preparing the search and status report on information/ documents available on NSE and BSE website:

1. Corporate Announcements
2. Corporate Actions
3. Financial Results
4. Board Meetings
5. Shareholders Meetings

6. Voting Results
7. Results Calendar
8. Shareholding Patterns
9. Corporate Governance
10. Disclosures
11. Offer Documents
12. Information Memorandum
 - (a) QIP
 - (b) Scheme of Arrangement
 - (c) Companies listed under Direct Listing
 - (d) Revocation
13. Pledge Data
14. Sustainability Reports
15. Buyback / Redemption
16. Public Notice - Compulsory Delisting

ANNEXURE – 1**[FORMAT OF SEARCH REPORT]****TO WHOMSOEVER IT MAY CONCERN**

We have carried out inspection vide **MCA CHALLAN No. 123AAA2** dated _____ in respect of XYZ PRIVATE LIMITED (hereinafter referred as “**the Company or XYZ**”) having CINU **11101 DL1993 PTC000000**. We do hereby clarify and confirm that we have perused the documents uploaded on the website of MCA i.e. www.mca.gov.in under the provision of the Companies Act 1956 and 2013 as Company registered by Registrar of Companies.

On the basis of such perusal of documents available on the website of MCA i.e. www.mca.gov.in, we do hereby certify and confirm that the Company has complied with the provisions under the provision of Companies Act 2013 (erstwhile Companies Act, 1956).

This certificate has been issued on the specific request made by the Company on the basis of documents available on the website of MCA.

Search Report

No. of the company (CIN)	U11101DL1993PTC000000
Name of the company	XYZ PRIVATE LIMITED
Registered Office	00, HauzKhas Apartment. Safdarjung Enclave, New Delhi - 110 016
Authorized Capital	Rs. 1,00,00,000/- (One Crore Rupees)
Paid Up Capital	Rs. 1,00,000-(One Lakh Rupees)
Date of Incorporation	27.11.1993

Present Directors (As per detail available on List of Signatories on MCA Portal)

DIN	Name	Designation	Date of appointment
0123456	A	Director	05.09.2015
0223344	B	Director	01.02.2016
00145274	C	Additional Director	22.05.2017
07895421	D	Additional Director	22.05.2017

Number of Shareholders : Two

Charge Id. : 10016444	Document Date	Registration Date:
Creation of Charge	17-07-2006	17-07-2006
Modification of Charge	21-08-2009	
Details of Agreements creating charge	Equitable mortgage or mortgage of property by depositing the title deeds	
Bank/Financial Institution/ NBFC	SBI	
Amount Secured	470000000	
Terms & Conditions	Rate of Interest:- 15% Margin: - Repayment:	
Security and other particulars: (At the time of creation)		
1. Premises on the 1st floor of building, admeasuring about 25,480.69 sq. feet (built up) constructed on Plot bearing survey No. 124 to 128.		
Security and other particulars: (First Modification dated:)		
1. In aggregate 4713.782 sq. meters, situated at International Airport Road, Narol, Delhi.		

Details of Charges Satisfied

S.No.	Charge ID	Date of Creation	Date of Satisfaction	Amount
1.	10016444	17-07-2006	21.12.2017	470000000

Details of shareholders

S.No.	Ledger Folio	Name	Address	Number of Equity shares	Face Value	Total
1	001	A	211, Ground Floor, Sarvapriya Vihar, Hauz Khas, Delhi	5,000	10	50,000

2	002	B	332, Ground Floor, Sarvapriya Vihar, Hauz Khas, Delhi	5,000	10	50,000
---	-----	---	---	-------	----	--------

List of Forms filed on MCA portal

S.No.	Name and purpose of form filed	Date of filing
1.	ADT-2	---
2.	CHG- 4	---
3.	MGT- 14	---
4.	FORM- 20 B	---
5.	AOC- 4	---
6.	MGT- 7	---
8.	DIR- 12	---
9.	FORM 1	---
10.	FORM 23 AC	---

Non Filing of Forms

Forms	Purpose
Form DIR-12 in respect of regularization of appointment of Directors not filed since incorporation	In accordance with the applicable provisions of the Companies Act, every director who is being appointed in the meeting of Board is required to be regularized in the upcoming shareholders meeting and intimation of such regularization will be given to MCA by filing Form 3 or DIR-12.
Form MGT-14 in respect of disclosure of shareholders not filed for F.Y. 2013-14	Required as per the provisions of section 179(3) of the companies act.
Form MGT-14 in respect of adoption of accounts and board report approval not filed for F.Y. 2013-14	Required as per the provisions of section 179(3) of the companies act.
Form ADT-1 is not found on the MCA.	Required as per the provisions of section 139 of the companies act.

LOAN ON THE COMPANY

As per the latest report of auditor of the Company, it states that the following:

The Company is a wholly owned subsidiary of ABC Pvt Ltd, a company incorporated in India and has taken an advance of Rs 21,12,000 from its holding company.

AND

As per the Form AOC-2, the loan from Mr. G, Director is 1 lakh.

LEGAL CASE PENDING ON XYZ PRIVATE LIMITED

As per the information shared with the ministry of corporate affairs, there are no legal cases pending on the Company.

DISCLAIMER: The said Search Report is purely a summary of the contents and status of documents examined on an inspection of the Company's documents available on the official website of the Ministry of Corporate Affairs (www.mca.gov.in) on the 16.03.2018 vide SRN No. U05629324 dated 16.03.2018. The report is not based on any personal judgments or opinion of any individual or professional.

On the basis of the documents examined, the facts and figures as stated in the said report seem true and correct to the best of our knowledge and belief. We however disclaim any responsibility on account of any implications, decisions or actions taken on the basis of some inadvertent mistake in the said report.

MODEL TRADEMARK SEARCH REPORT

Client:		
Mark:	NUTRIENT	
Type of Search:	Word marks and design marks	
Classes:	Classes: 3, Section 9,	
Indices:	Trademarks, Index Headings, Figurative Elements, Foreign Character Translations, Descriptions of Marks	
Status:	Application, Registered, Active	
Reference No:		
Goods/Services:		
Data Sources:		
Category Summary:		
S.No.	Name	Information
1	Goods Conflict	You should review the goods listed.
2	Service Conflict	You should review the services listed.
3	Phonetically Similar	This mark sounds the same.
4	Partial Wares	Some of your wares form part of this class.
5	Partial Services	Some of your services form part of this class
6	Similar Design	The desing elements appear to be a conflict.
7	Advertised	This mark has been advertised

8	Oppose	You should oppose the registration of this mark.
9	Infringe	This mark infringes on your rights

Item Information

S.No.	Trademark	Reg	App/Ser	Status	Category

DISCLAIMER:

This report is designed to uncover trademark rights that have the potential to conflict with the Mark and Goods/Services list <<>> above.

<<>> has taken reasonable steps to ensure that this report includes complete and accurate information. However, because trademark searching is highly subjective and data from numerous third-party sources may be incomplete, inaccurate, or out-of-date, WE CANNOT AND DO NOT WARRANT THE ACCURACY OF THIS REPORT OR THAT THIS REPORT IS ERROR FREE OR COMPLETE. AS A RESULT, WE ALSO DISCLAIM ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

This report in no way constitutes a legal opinion. Any analysis and determination about the availability of a Mark is solely the responsibility of the search customer.

ANY LIABILITY ARISING FROM THE PREPARATION OF OR YOUR USE OF THIS REPORT IS LIMITED TO A REFUND OF THE SEARCH FEE PAID. Acceptance of this search constitutes an acceptance of the aforesaid terms, conditions and limitations. The search is valid only for the exact Mark and Goods/Services listed above.

Except for those materials supplied by third-parties, this report constitutes the intellectual property of <<>>. You own the copy or copies of the report provided to you by<<>> , but otherwise enjoy only a limited license to use the copyrighted and otherwise protected materials in the copy or copies provided to you.

Copyright 20<<><<>>. All rights reserved.

Name:

Address:

Telephone:

PROPERTY TITLE SEARCH REPORT

Property Information Owner name: Country: Property Address:	Report created on:
--	---------------------------

LEGAL DESCRIPTION:

Deed Information :	Type:				
Title is vested in :					
Title received from:					
Dated:		Recorded:		Book & Page:	

1st Mortgage:		Dated:		Recorded:	
Lender:					
Borrower:					
2nd Mortgage:		Dated:		Recorded:	
Lender:					
Borrower:					

Lien Judgment and Comments	Tax Information			
	Tax ID :			
	Tax Year:			
	Date paid:		Amount:	
	Assessed value:		Exemption:	
	Annual:	x	Installments:	Deliquent:

LESSON ROUND UP

- The Search Report gives the master data about the Company including its history & details about its directors and an assurance that neither the company nor its directors are defaulters in any of the earlier loans and borrowings.
- MCA21 offers the facility to view documents relating to charges created by the company which is handy for banks and financial institutions while granting loans.
- The scope of search report depends upon the requirements of the bank or financial institution concerned.
- The main objective of a Search and Status Report is to help the Lenders and Investors to take an informed decision.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. What is a Search/ Status Report? Discuss the content of the report in case of the ROC Search Report.
2. State the point to kept in mind by a professional while preparing the Search / Status Report.
3. Discuss the Key documents to be analysed while preparing the Stock Exchange search and status report

[illegible]

Lesson 5

Know Your Customer (KYC)

LESSON OUTLINE

- Introduction
- Objective of KYC
- Types of KYC
- KYC of Directors by MCA
- ICSI KYM Guidelines
- KYC Norms for CS in Practice
- Enhanced due diligence in KYC
- Frauds due to incomplete KYC
- KYC Documents for various entities
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The continuous regulatory actions on Anti-Money Laundering (“AML”), involving a number of high profile fines and investigations, The Know Your Customer (“KYC”) is become a key focus area for the financial Institutions, management, and professional firms.

The objectives of Know Your Customer (KYC) is to prevent Companies, Financial Institutions and other form of Business structure from being used, intentionally or unintentionally, by criminal elements for money laundering activities. Further, the Regular KYC helps these institutions for better understanding of their customers, clients and Directors and their financial dealings.

After reading this lesson, the student will understand the various KYC Requirements and Consequences of the Incomplete KYC or for Non performing KYC before accepting any engagement.

INTRODUCTION

KYC stands for 'Know Your Customer' or 'Know your Client'. Which is a process for every professionals, bank or financial & landing institution and it is a process to get information about the identity and address of the customer. This process has been made compulsory for Bank by RBI before opening an account, to guarantee that there must not be any misuse of any service provided by the banks. As per the order by RBI, banks have to update the KYC details information at regular intervals depending on the risk of the profile of the customer.

KYC is aimed to make it easier for business institutions to know and understand their customers. Implementation of KYC guidelines for every new bank account was made compulsory by RBI in the year 2002, Subsequently, These standards have become the international benchmark for framing Anti Money Laundering and combating financing of terrorism policies by the regulatory authorities. Compliance with these standards by the banks/ financial institutions/NBFCs in the country have become necessary for international financial relationships.

The Corporate structure play an essential role in the economic system, the issue of the misuse of corporate structure entities for illicit purposes has drawn increasing attention from policy makers and regulators. There has been growing concern that these vehicles may be misused for illicit purposes, such as money laundering, bribery and corruption, shielding assets from creditors, illicit tax practices, market fraud, and other illicit activities.

In view of this the Ministry of Corporate Affairs has commenced the verification for Directors wherein every Director who has been allotted DIN would be mandatorily required to file form DIR-3 KYC. By filing DIR-3 eKYC form the Director would have to provide a unique personal mobile number and personal email address which would both be verified with an OTP code and the in case of the non-compliant of the same such DINs will be deactivated by the MCA.

OBJECTIVES OF KYC

The objectives of KYC is to stop the corporate vehicles to be used intentionally or unintentionally, by criminal elements for illicit purposes such as money laundering activities, Fraud, bribery and corruption, shielding assets from creditors, illicit tax practices, Market fraud, Terrorist Funding, avoiding future risk and the KYC related procedures also enable institution to better understand their customers and their financial dealings. This helps in managing associated risks prudently.

Meaning of Customer under KYC

For the purpose of KYC, a 'Customer' includes a

- a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who is engaged in the transaction or activity, is acting;
- director who has been allotted DIN issued by the Ministry of Corporate Affairs;
- a person or entity that maintains an account and/or has a business relationship with the bank;
- beneficiaries of transactions conducted by professional intermediaries such as stockbrokers, Chartered Accountants, Company Secretaries or solicitors, as permitted under the law; or
- any person or entity connected with a financial transaction which can pose significant reputational or other risks to the bank, for example, a wire transfer or issue of a high-value demand draft as a single transaction;
- one on whose behalf the account is maintained (i.e. the beneficial owner).

KYC Requirement in various transaction

1. Incorporation of Company

2. Obtaining DIN
3. Opening of Bank Account / D-mat Account/ Wallet
4. Deposit /Withdrawal of Cash
5. Purchase of Gold/ Silver/Property
6. Employment, Provident Fund etc.
7. Opening a subsequent account where documents as per current KYC standards not been submitted while opening the initial account
8. Opening a Locker Facility where these documents are not available with the bank for all the Locker facility holders
9. When the bank feels it necessary to obtain additional information from existing customers based on conduct of the account
10. When there are changes to signatories, mandate holders, beneficial owners etc. KYC will also be carried out in respect of non-account holders approaching the bank for high value one-off transactions.

TYPES OF KYC

C-KYC

C- KYC stands for Central KYC which provide the uniform norms and inter-usability. The central KYC registry across all financial sectors has been set up as a depository for KYC records. This new process, without asking customers to provide multiple KYC undertakings will help banks, mutual funds, brokerage firms and depository participants offer services. After complying with the new CKYC norms, a unified customer identification code is generated, and which is used whenever KYC is required. This initiative has been started for the purpose of centralising and streamlining KYC process and also to avoid the duplication of KYC and less scope of forgery. The government has authorised the Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI) for performing the functions of Central KYC Records Registry(CKYCR), also the duty of receiving the details and safely storing them and retrieving the KYC records in the digital form of a 'client'. Earlier customers have to provide KYC documents separately to every financial institution but after the introduction of one-time centralisation process CKYC, customers will only have to complete the process once and it can be used for all different processes like opening savings bank accounts, buying life insurance or investing in mutual fund products.

e-KYC

e-KYC stands for electronic KYC. The service of e-KYC can only be used by those who have Aadhar numbers. Customers by their own consent needs to authorize their Unique Identification Authority of India (UIDAI), to reveal their identity or address information through biometric authentication to their respective bank branches or business correspondent (BC). After this the UIDAI sends the customers data comprising of customer name, age, gender, and photograph electronically to the bank. It is a valid process for KYC verification and under Prevention of Money Laundering (PML) Rules, information provided under e-KYC process will be considered as a 'Valid Document'.

KYC of Directors by MCA

The KYC of Directors had been conducted by the MCA at the time of the Allotment of the Director Identification Number and earlier it is not mandatory for the Director to update their KYC on the subsequent change. With the recent insertion of Rule 12 A in the Companies (Appointment and Qualification of) Rules , 2014 Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year need to submit

e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year.

Some important points to be noted in respect of DIR-3 KYC

1. DIR-3 KYC is required to be filed by every Director who has been allotted DIN on or before 31st March, of a Financial Year and whose DIN status is 'Approved'.
2. Due date of filing of DIR-3KYC is on or before 30th June of immediate next financial year,
3. Prerequisite Mandatory Information DIR-3 –
 - Unique Personal Mobile Number
 - Personal Email ID.
 - Email ID and Mobile Number for receiving OTP
4. Certification of DIR-3 KYC
 - First by the affixing Registered Digital Signature of respective person / Director
 - Certification by practicing professional by affixing Digital Signature (CS/CA/CMA)
5. Filing of DIR-3 KYC would be mandatory for Disqualified Directors as well.
6. If director fails to file DIR-3 KYC the MCA21 system will mark all approved DINs (allotted on or before 31st March, 2018) against which DIR-3 KYC form has not been filed as 'Deactivated' with reason as 'Non-filing of DIR-3 KYC'
7. MCA has notified 'Nil Fee' and 'late Fee of Rs. 5,000 (Applicable after the due date) for Filing e-Form DIR-3 KYC under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.
8. MCA has also notified format of e-form DIR-3 KYC under new Rule 12A (Directors KYC) along with procedure for restoration of deactivated DINs of Directors, applicable.

KYC of Companies

Rule 25A of the Companies (Incorporation) Rules, 2014 provides that every company incorporated on or before the 31st December, 2017 shall file the particulars of the company and its registered office, in e-Form ACTIVE (Active Company Tagging Identities and Verification) on or before 15th June, 2019.

further, the company which has not filed its due financial statements under section 137 or due annual returns under section 92 or both with the Registrar are restricted from filing e-Form-ACTIVE, unless such company is under management dispute and the Registrar has recorded the same on the register:

The companies which have been struck off or are under process of striking off or under liquidation or amalgamated or dissolved, as recorded in the register, are not required to file e-Form ACTIVE:

In case a company does not intimate the said particulars, such Companies are marked as "ACTIVE-non-compliant" on or after 16th June, 2019 and shall be liable for action under sub-section (9) of section 12 of the Companies Act, 2013:

Provided also that no request for recording the following event based information or changes shall be accepted by the Registrar from such companies marked as "ACTIVE-non-compliant", unless "e-Form ACTIVE" is filed-

- (i) SH-07 (Change in Authorized Capital);
- (ii) PAS-03 (Change in Paid-up Capital);
- (iii) DIR-12 (Changes in Director except cessation);
- (iv) INC-22 (Change in Registered Office);

(v) INC-28 (Amalgamation, de-merger)

Where a company files “e-Form ACTIVE”, on or after 16th June, 2019, the company shall be marked as “ACTIVE Compliant”, on payment of fee of ten thousand rupees”.

ICSI Guidelines on Know Your Members

Introduction of “Know Your Member” (KYM) proforma for ICSI members w.e.f. FY 2016-17 Members of the Institute are presumably aware about the Regulation 3 of The Company Secretaries Regulations, 1982, wherein every member is required to communicate to the Institute any change of professional address, within one month of such change. Further, to have updated members KYC the ICSI has provided a “Know Your Member” (KYM) proforma which to be submitted by all the members of the Institute w.e.f. payment of annual membership fee for the year 2016-17. The KYM proforma has to be submitted by the members once in three years starting with payment of annual membership fee for the year 2016-17 and thereafter every time there is a change in job/profession/professional address. The fee shall be accepted only on receipt of the proforma duly filled in and signed.

The “Know Your Member” (KYM) proforma submitted by the members of the Institute, is required to verify their identity/details, on similar lines with that of KYC used by banks. This KYM facility is expected to prevent identity theft of members by fraudulent elements and help the Institute to maintain updated information about the members.

The members should submit two documents along with the KYM proforma duly filled and signed – one document which serves as Proof of Identity (PoI) and another document which serves as Proof of Address (PoA). A member should submit any one of the following five documents notified as ‘Officially Valid Documents (OVDs)’ by the Government of India as proof of identity 1) Passport, 2) Driving Licence, 3) Voters’ Identity Card, 4) PAN Card, 5) Aadhaar Card issued by UIDAI.

If any of these documents also contain the address details, then same is accepted as a ‘proof of address’. If the document(s) submitted by the member for proof of identity does not contain address details, then the member should submit another document which contains address details such as Water bill, Telephone (landline or post-paid mobile bill), Electricity bill, Income Tax Assessment Order, Proof of Gas Connection, Certificate from Employer of reputed companies on letter head, Applicant’s current and valid ration card, Photo Passbook of running Bank Account (Scheduled Public Sector Banks, Scheduled Private Sector Indian Banks and Regional Rural Banks only).

Know Your Client (KYC) Norms for Company Secretary in Practice

For a Practicing company Secretary, the Client Information as well as due diligence on clients has become a necessity under the complex business scenario and the current regulatory environment. such an exercise can be made possible in a structured way and the various professional bodies advise their members to conduct KYC about their clients so that professionals can freely exercise and deliver their professional services in the best suited way.

The ICSI KYC norms are recommendatory in nature and every Company Secretary in Practice carrying out attestation function is encouraged to follow the KYC Norms.

The Illustrative list of KYC Information is as under:

1. Client Information

- (a) Name of Entity
- (b) CIN / Registration No.
- (c) Date of Incorporation / Registration No.

104 PP-SACM&DD

- (d) Type of Entity
- (e) Business Description
- (f) Address of Registered Office
- (g) Address of Corporate Office
- (h) Address(es) of Branch Office(s)
- (i) PAN No. and Name & Address of Income Tax Circle
- (j) Email id
- (k) Telephone No (s)
- (l) Fax No (s)
- (m) Banker(s) of the Entity
- (n) Major Client customers information

2 Corporate Structure

- (a) Shareholding pattern
- (b) Name of parent company
- (c) Name of subsidiaries
- (d) Details of Chain holding, if any
- (e) Details of associate / JVs

3. Permissible Business information as per Memorandum of Association

4. Board Structure/ Organization Structure

5. Transaction with Business entities in which Directors are interested

- (i) Details of Loans and Guarantees
- (ii) Details of Loans and Guarantees in which director(s) are interested

6. Creation, modification and satisfaction of charges

7. FOREX Exposure and overseas borrowings

8. Payment status of statutory dues and arrears

9. Name of the CEO, Company Secretary & CFO

10. Engagement Information

- (a) Details of assignment proposed by the Entity

11. Proceedings against the company or any of its director

- (a) Details of proceedings pending or commenced, etc.
- (b) Details of prosecution, if any, pending or commenced or resulting in conviction in the past against the director and /or the company or its parent company or any of its subsidiaries
- (c) Details of criminal prosecution, if any, pending or commenced or resulting in conviction in the past against the director
- (d) Whether any of the director(s) of the company attracts any of the disqualifications envisaged under

Section 164 of the Companies Act, 2013?

- (e) Has any director and /or the company or its parent company or any of its subsidiaries at any time been found guilty of violation of rules / regulations / legislative requirements by customs / excise / income tax / foreign exchange / other revenue authorities, if so give particulars
- (f) Whether any director at any time has come to adverse notice of a regulator such as SEBI, RBI, IRDA, MCA.
- (g) Default in repayment of Public Deposits and unsecured loans debentures, loans from banks, financial institution

12. Other Information

- (a) Details of last IPO/FPO/Rights Issue
- (b) Name, address and CoP No. of Statutory Auditor
- (c) Name, address and CoP No. of Secretarial Auditor

13. Undertaking from the client to confirm that the information provided is to the best of knowledge and belief true and complete. I undertake to keep the PCS informed, as soon as possible, of all event which take place subsequent to his engagement which are relevant to the information provided above.

Suggested criteria to be adopted by Professional as KYC Norms

Generally, the KYC policies incorporating the following four key elements:

- Client Acceptance Policy;
- Client Identification Procedures;
- Client Monitoring Mechanism; and
- Risk management.

These are suggested measures, to be adopted by the professional while dealing with client and undertaken any assignment from a client/ prospective client. As a Code for good practice every professional should ensure that no fraud has been take place due to adoption of the poor KYC norms. It is the duty of the professional proper checking of documents will be done in order to complete the requirement of KYC Norms.

Though, there is no settled manner for doing KYC by the professional, However the ICSI has prepared a policy on KYM, KYC Norms, However, variation in the procedure for KYC of one time assignment and or for the regular client may be there.

The Professionals should take extra care with the foreign client, to ensure that all the rules and regulations are followed, according to the specified procedures for dealing with the foreign clients.

RISKS UPON DUE KYC

There are different types of risk involved in the proper implementation of KYC:

1. Reputational Risk

Some instances like if a company entered into fraudulent transaction and later on if the public will come to know about it then this would create a sense of insecurity among the public and this would harm the reputation and it would be hard for the professional to attract client in future. Hence, it is advisable to must keep proper KYC of Client.

2. Operational Risk

This can be considered as a risk of loss due to failed internal processes, poor documentation, litigation, disputes and due diligence, people and systems or also from external events.

3. The Risk that arises legally

If case, any client would get involved with any illegal activity it will also attract penalties and adjudications on professional. If a body does not follow KYC norm it would be subject to penalty.

4. Financial Risks

If any professional without complying with KYC Norms, provides its services relating to certification, declarations and the financial institution gives loan to a customer and later the bank fails to identify the customer then it will be hard for the bank to retrieve its money, which will result into a financial loss.

ENHANCED DUE DILIGENCE (EDD) IN KYC

EDD has not been internationally defined. As a result financial institutions are at risk of being held to differing standards dependent upon their jurisdiction and regulatory environment. An article published by Peter Warrack in the July 2006 edition of ACAMS Today (Association of Certified Anti Money Laundering Specialists) suggests the following:

“A rigorous and robust process of investigation over and above (KYC) procedures, that seeks with reasonable assurance to verify and validate the customers identity; understand and test the customers profile, business and account activity; identify relevant adverse information and risk assess the potential for money laundering and / or terrorist financing to support actionable decisions to mitigate against financial, regulatory and reputational risk and ensure regulatory compliance.

CHARACTERISTICS OF EDD

1. **Rigorous and robust:** Generally this means consistent, thorough and accurate. The process must be documented and available for inspection by regulators. The process must be SMART (Specific, Measurable, Achievable, Relevant and Time bound), scalable and proportionate to the risk and resources. A Ball workflow system ensuring that the KYC process and procedures are Defined, Repeatable and Measurable is recommended.
2. **Reasonable assurance:** Reasonableness depends upon factors including jurisdiction, risk and resources. For sanction matches it depends upon information provided by regulators. In all cases the suggested standard is to the civil standard of proof i.e. on the balance of probability.
3. **Relevant adverse information:** Information obtained from any source, including the Internet, free and subscription databases and the media, which is directly or indirectly indicative of involvement in money laundering, terrorist financing or predicate offenses.

CUSTOMER DUE DILIGENCE IN KYC

Customer Due Diligence (CDD)” means identifying and verifying the customer and the beneficial owner, CDD refers to the monitoring of clients and their activities to see if the client does not change its status over time. In effect this contains the possibility that an individual (or more often an organization) that has passed KYC is still the same as was the earlier and doing the same what they have declared that what they would do when they underwent KYC checks.

For example changes in the signatory of the account, changes in the partners, changes in the object, changes in the source of income, revenue etc. hence without CDD the services provider would not know that there is changes in the ownership.

REGULATORY ACTION ON VIOLATION OF KYC NORMS

The penalties have been imposed in exercise of powers vested in the Reserve Bank under the provisions of Section 47(A) (1) (c) read with Section 46(4)(i) of the Banking Regulation Act, 1949, taking into account the violations of the instructions/directions/guidelines issued by the Reserve Bank from time to time. The Reserve Bank of India has imposed monetary penalty on the following banks for violation of regulatory directions / instructions / guidelines, among other things, on KYC norms. The details of the penalty are:

S. No.	Name of the bank	Penalty Amount (in ₹ million)
1.	Allahabad Bank	20
2.	Bank of India	10
3.	Bank of Baroda	50
4.	Canara Bank	20
5.	Corporation Bank	10
6.	HDFC Bank	20
7.	IndusInd Bank	20
8.	Punjab National Bank	30
9.	RBL Bank	10
10.	SBBJ	20
11.	SBM	10
12.	Syndicate Bank	30
13.	UCO Bank	20

Eight other banks, namely, Axis Bank, Federal Bank, ICICI Bank, Kotak Mahindra Bank, OBC, Standard Chartered Bank, SBI and Union Bank of India have been advised to put in place appropriate measures and review them from time to time to ensure strict compliance of KYC requirements and FEMA provisions on an ongoing basis.

This action is based on deficiencies in regulatory compliance and is not intended to pronounce upon the validity of any transaction or agreement entered into by the bank and its customers.

Grounds for Actions:

On the basis of inputs received from a public sector bank, the Reserve Bank undertook a scrutiny on advance import remittances in 21 banks in October/November 2015. The scrutiny examined the alleged irregularities in opening and monitoring of accounts including violations under FEMA provisions. It also looked into the effectiveness of systems and processes for implementation of KYC norms / AML standards. The findings revealed weaknesses in the internal control systems, management oversight and violation of certain regulatory guidelines issued by the Reserve Bank as detailed below:

- non-adherence to KYC requirements like customer identification and risk categorisation
- non-adherence to the Reserve Bank's instructions on monitoring of transactions in customer accounts and prompt filing of STRs
- non-adherence to the directions / guidelines issued under FEMA provisions

Based on the findings, the Reserve Bank issued a show cause notice to 21 banks. After considering their replies, the facts of each case, as also personal submissions, information submitted and documents furnished, the Reserve Bank came to the conclusion that some of the violations of serious nature were substantiated and warranted imposition of monetary penalty on thirteen banks, as the failure on the part of these banks to take timely remedial measures had aggravated the seriousness of the contraventions and its impact.

In respect of eight other banks, as detailed above, based on written and oral submissions, it was decided to advise them to put in place appropriate measures and review the same from time to time to ensure strict adherence to KYC / AML requirements as well as FEMA provisions on an ongoing basis.

Airtel Payments Bank Limited

Based on the complaints and adverse media reports alleging that the bank had opened customer accounts without a clear/specific consent of the customers, a supervisory visit to the bank was undertaken by RBI between November 20 and 22, 2017. The supervisory visit report and other relevant documents, revealed, inter alia, contraventions of 'Operating Guidelines for Payments Banks' and the directions issued by RBI on Know Your Customer (KYC) norms. Based on the documents, a Notice dated January 15, 2018 was issued to the bank advising it to show cause as to why penalty should not be imposed for non-compliance with guidelines and directions issued by RBI. After considering the bank's reply and oral submissions made in the personal hearing, RBI came to the conclusion that the aforesaid charges of non-compliance with RBI guidelines/directions were substantiated and warranted imposition of monetary penalty.

The Reserve Bank of India (RBI) has imposed, on March 07, 2018, a monetary penalty of ₹ 50 million on Airtel Payments Bank Limited (the bank) for contravening the 'Operating Guidelines for Payments Banks' and directions issued by RBI on Know Your Customer (KYC) norms. This penalty has been imposed in exercise of powers vested in RBI under the provisions of Section 47A(1)(c) read with Section 46(4)(i) of the Banking Regulation Act, 1949, taking into account failure of the bank to adhere to the aforesaid guidelines/directions issued by RBI. This action is based on deficiencies in regulatory compliance and is not intended to pronounce upon the validity of any transaction or agreement entered into by the bank with its customers.

DEBIT CARD FRAUD DUE TO DUE KYC

A complainant's card was used 68 times at ATMs in various locations during the period of two months. He complained about it to the bank after two months and the card was blocked. The bank replied that an auto renewed card and the PIN was dispatched to his registered address by two different courier agencies and was received by him. It was only when the complainant came forward with the complaint it was learnt that he had changed his address and mobile number since the time of opening the account. The bank also pleaded that the customer's account was classified under low risk category, and therefore as per bank's policy, the KYC updating of the customer was due after seven years. However, the BO opined that there was deficiency in service by the bank in so far as the bank did not exercise due care in updating the customer's address/contact number before dispatching the renewed card. Also, without ascertaining the receipt of the card by the complainant, the bank mechanically dispatched the PIN. While using the services of outsourcing agency, the bank did not put into place appropriate risk management framework. The bank failed to monitor the pattern of customer transactions before and after issue of renewed card. The sudden surge of transactions after dispatch of renewed card should have raised suspicion. The bank was advised to pay the total amount of all the disputed transactions.

Major frauds which took place with the help of incomplete KYC

- To evade taxes, an individual routes savings transactions through multiple bank accounts.
- An individual illegally obtains personal information/ documents of another person and takes a loan in the name of that person.

- He/she provides false information about his/her financial status, such as salary / IT return and other assets, and takes a loan for an amount that exceeds his / her eligible limits with the motive of non-repayment.
- A person takes a loan using a fictitious name and there is a lack of a strong framework pertaining to spot verifications of address, due diligence of directors/promoters, pre-sanction surveys and identification of faulty/incomplete applications and negative/criminal records in client history.
- Fake documentation is used to grant excess overdraft facility and withdraw money.
- A person may forge export documents such as airway bills, bills of lading, and Export Credit Guarantee Cover and customs purged numbers/orders issued by the customs authority.
- Frauds related to the advances portfolio accounts for the largest share of the total amount involved in frauds in the Indian banking sector.
- deficient appraisal system, poor post disbursement supervision and inadequate follow up.
- Siphoning of funds wherein the borrowed funds from banks are utilised for purposes unrelated to the operations of the borrower.
- **Diversion of funds by :**
 - Using of short-term working capital funds for long-term commitments not in conformity with the terms of sanction
 - Using borrowed funds for creation of assets other than those for which the loan was sanctioned
 - Transferring funds to group companies
 - Investment in other companies by acquiring shares without the approval of lenders
 - Shortage in the usage of funds as compared to the amounts disbursed/ drawn, with the difference not being accounted for
 - Over-valuation or absence of requisite collaterals
- **Concealing liabilities:** Borrowers concealing obligations such as mortgage loans on other properties or newly acquired credit card debts in order to reduce the amount of monthly debt declared on the loan application.
- **Misstatement:** Deliberately overstating or understating the property's appraised value.
- **Shot gunning:** Multiple loans for the same property being obtained simultaneously for a total amount greatly in excess of the actual value of the property.
- Delay in Action (higher lag time) by the Institutions for declaration of frauds resulting the borrower gets considerable time to erase the money.

Online Fraud through incomplete KYC

In last few years, the majority fraud cases reported were reported as technology-related frauds (covering frauds committed through / at an internet banking channel, ATMs and other payment channels like credit/debit/prepaid cards).

Business and technology innovations that the banking sector is adopting in their quest for growth are in turn presenting heightened levels of cyber risks. These innovations have probably introduced new vulnerabilities and complexities into the system. For example, the continued adoption of web, mobile, cloud, and social media technologies has increased opportunities for attackers. Similarly, the waves of outsourcing, offshoring, and third-party contracting driven by a cost reduction objective may have further diluted institutional control over

IT systems and access points. These trends have resulted in the development of an increasingly boundary-less ecosystem within which banking companies operate, and thus a much broader “attack surface” for the fraudsters to exploit.

Hacking: Hackers/fraudsters obtain unauthorized access to the card management system of the respective bank. Counterfeit cards are then issued for the purpose of money laundering.

Phishing: A technique used to obtain your card and personal details through a fake email

Pharming: A similar technique where a fraudster installs malicious code on a personal computer or server. This code then redirects clicks you make on a Website to another fraudulent Website without your consent or knowledge

Vishing: Fraudsters also use the phone to solicit your personal information.

Smishing: It uses cell phone text messages to lure consumers in. Often the text will contain an URL or phone number. The phone number often has an automated voice response system. And again just like phishing, the smishing message usually asks for your immediate attention.

Debit card skimming: A machine or camera is installed at an ATM which picks up card related information and PIN numbers when customers use their cards.

Computer viruses: With every click on the internet, a company's systems are open to the risk of being infected with nefarious software that is set up to harvest information from the company servers.

Counterfeit instruments: Fake cheques / Demand Drafts that look too good to be true are being used in a growing number of fraudulent schemes, including foreign lottery scams, cheque overpayment scams, internet auction scams and secret shopper scams.

Possible frauds with Mobile Wallets

Increased risk of money laundering: Transfer of money into and out of a mobile wallet (with open and semi open wallet option available) from or to a bank account is now possible. Cash-in from the bank account of an individual and cash-out to a different bank account of another individual can be used as a platform for laundering unaccounted money.

Fake merchants: If the merchant on-boarded by the service provider is a fraudster, and the payment is made by the customer for fictitious goods or services from the merchant, cash can be debited from the account.

Adoption of mobile commerce is dependent on customers' perceptions about how safe their virtual money is from fraud. Over time, the ability to successfully counter frauds can become a key business differentiator for mobile wallet companies. Fraud, therefore needs to be considered as a critical business risk rather than just a one-off financial loss.

Illustrative list of KYC Documents: Checklist of Document Submission

– Sole Proprietorship Firm

- PAN copy / PAN number of the Proprietor.
- Latest Colour Photograph of Proprietor and authorised signatory (if any).
- Copy of Identity and Address proof of the Proprietor and authorised signatory (if any) Copies of any 2 existence proofs of the firm confirming name and address of firm and name of proprietor
- FATCA (Foreign Account Tax Compliance) Declaration

– Accounts of Partnership Firms

- PAN copy / PAN number of the Firm.
 - Registration certificate (Only in case of Registered Partnership firms)
 - Partnership deed
 - Copy of existence proof confirming name and address of firm
 - Beneficial Ownership Declaration (with name and address of all the partners)
 - FATCA (Foreign Account Tax Compliance) Declaration
 - Latest Colour Photograph of all authorized signatories.
 - Copy of Identity and Address proof of all authorised signatories.
- **Accounts of Private and Public Limited Company**
- PAN copy / PAN number of the Company.
 - Copy of Memorandum of Association & Article of Association
 - Latest Colour Photograph of all the authorized signatory/signatories
 - Copy of Identity and Address proof of all authorised signatories.
 - Copy of address proof of company
 - Copy of Certificate of Incorporation.
 - Beneficial Ownership Declaration
 - FATCA (Foreign Account Tax Compliance) Declaration
- **Accounts of Hindu Undivided Family (HUF)**
- Copy of PAN of HUF.
 - Latest Colour Photograph of Karta and authorised signatory (if any).
 - Copy of Identity and Address proof of the Karta and authorised signatory (if any).
 - Copy of address proof of HUF if different from address of Karta.
 - FATCA (Foreign Account Tax Compliance) Declaration
- **Accounts of (TASC) Trust / Association / Society / Club**
- Copy of PAN card of Trust / Association / Society / Club
 - Copy of address proof of Trust / Association / Society / Club
 - Latest List (Name and address) of Directors / Trustees/ All members of the Managing Committee
 - Copy of registration certificate in case of registered Entity
 - Registration certificate (Only in case of Registered Trust)
 - Resolution of the Trustee Meeting
 - Trust deed
 - Certificate of Tax Exemption (if any) issued under section 11/12/12A of the Income Tax Act (Mandatory in case of Savings Account)
 - In case of FCRA trust, a copy of approval under FCRA issued by Ministry of Home Affairs

- Beneficial Ownership Declaration
- FATCA (Foreign Account Tax Compliance) Declaration
- Latest Colour Photograph of all the authorized signatory
- Copy of Identity and Address proof of all authorised signatories

KYC documents for FPIs

Accounts of FPIs which are eligible/ registered as per SEBI guidelines, for the purpose of investment under Portfolio Investment Scheme (PIS), shall be opened by accepting KYC documents as detailed below , subject to Income Tax (FATCA/CRS) Rules. Provided that banks shall obtain undertaking from FPIs or the Global Custodian acting on behalf of the FPI that as and when required, the exempted documents as detailed below need to be submitted.

Category	Eligible Foreign Investors
I.	Government and Government related foreign investors such as Foreign Central Banks, Governmental Agencies, Sovereign Wealth Funds, International/ Multilateral Organizations/ Agencies.
II.	<p>Appropriately regulated broad based funds such as Mutual Funds, Investment Trusts, Insurance/ Reinsurance Companies, Other Broad Based Funds etc.</p> <p>Appropriately regulated entities such as Banks, Asset Management Companies, Investment Managers/ Advisors, Portfolio Managers etc.</p> <p>Broad based funds whose investment manager is appropriately regulated.</p> <p>University Funds and Pension Funds.</p> <p>University related Endowments already registered with SEBI as FII/Sub Account.</p>
III.	All other eligible foreign investors investing in India under PIS route not eligible under Category I and II such as Endowments, Charitable Societies/Trust, Foundations, Corporate Bodies, Trusts, Individuals, Family Offices, etc.

	FPI Type		
Document Type	Category I	Category II	Category III

Entity Level	Constitutive Documents (Memorandum and Article of Association, Certificate of Incorporation etc.)	Mandatory	Mandatory	Mandatory
	Proof of Address	Mandatory (Power of Attorney mentioning the address is acceptable as address proof)	Mandatory (Power of Attorney mentioning the address is acceptable as address proof)	Mandatory other than Power of Attorney
	PAN	Mandatory	Mandatory	Mandatory
	Financial Data	Exempted *	Exempted *	Mandatory
	SEBI Registration Certificate	Mandatory	Mandatory	Mandatory
	Board Resolution @@	Exempted *	Mandatory	Mandatory
Senior Management (Whole Time Directors/ Partners/ Trustees/ etc.)	List	Mandatory	Mandatory	Mandatory
	Proof of Identity	Exempted *	Exempted *	Entity declares* on letter head full name, nationality, date of birth or submits photo identity proof
	Proof of Address	Exempted *	Exempted *	Declaration on Letter Head *
	Photographs	Exempted	Exempted	Exempted *
Authorized Signatories	List and Signatures	Mandatory – list of Global Custodian signatories can be given in case of PoA to Global Custodian	Mandatory - list of Global Custodian signatories can be given in case of PoA to Global Custodian	Mandatory
	Proof of Identity	Exempted *	Exempted *	Mandatory
	Proof of Address	Exempted *	Exempted *	Declaration on Letter Head *
	Photographs	Exempted	Exempted	Exempted *

Ultimate Beneficial Owner (UBO)	List	Exempted *	Mandatory (can declare "no UBO over 25%")	Mandatory
	Proof of Identity	Exempted *	Exempted *	Mandatory
	Proof of Address	Exempted *	Exempted *	Declaration on Letter Head *
	Photographs	Exempted	Exempted	Exempted *

* Not required while opening the bank account. However, FPIs concerned may submit an undertaking that upon demand by Regulators/Law Enforcement Agencies the relative document/s would be submitted to the bank.

@@ FPIs from certain jurisdictions where the practice of passing Board Resolution for the purpose of opening bank accounts etc. is not in vogue, may submit 'Power of Attorney granted to Global Custodian/Local Custodian in lieu of Board Resolution'

LESSON ROUND UP

- The corporate vehicles may be misused for illicit purposes, such as money laundering, bribery and corruption, shielding assets from creditors, illicit tax practices, market fraud, and other illicit activities.
- Every individual who has been allotted a Director Identification Number (DIN) as on 30th June of a financial year need to submit e-form DIR-3-KYC.
- Central KYC which provide the uniform norms and inter-usability of the KYC Documents.

GLOSSARY

- Central KYC Registry (CKYCR): Central KYC Registry is a centralized repository of KYC records of customers in the financial sector with uniform KYC norms and inter-usability of the KYC records across the sector with an objective to reduce the burden of producing KYC documents and getting those verified every time when the customer creates a new relationship with a financial entity.
- "KYC" means the due diligence procedure prescribed by the regulator for identifying and verifying the proof of address, proof of identity and compliance with rules, regulations, guidelines and circulars issued by the regulator or any other statutory authority under the Act from time to time
- eKYC is a paperless Aadhaar based process for fulfilling your KYC requirements to start investing in Mutual Funds. SEBI has recently allowed Aadhaar based KYC to be used for MF investments, for the convenience of investors.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. What is KYC & Why it is important for a company secretary to conduct KYC.
2. What are the documents to be given as proof of identity and proof of address?
3. Provide the list of document required for the KYC of the Foreign Government Bank willing to invest as Foreign Portfolio Investor (FPI).
4. Brief about the regulatory framework of the KYC of the directors by MCA.

[illegible]

Lesson 6

Signing and Certification

LESSON OUTLINE

- Concept of Pre-certification
- Various certifications by Company Secretaries
- Authentication of Documents
- Signing and Certification of Annual Return
- Certification of Annual Return (MGT-8)
- Concept of different professionals for Signing and Certification
- Corporate Governance Certification
- Obligations and Penal Provisions
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Pre-certification refer to a pre-emptive check to ensure that the particulars stated in the form or return are as per books and records of the company and are true and correct in accordance to the applicable provisions of the act.

The e-forms which are filed by the company need to be authenticated by the authorised signatory using the digital signature and such authorized signatory and the professional, who certify the e-forms are responsible for the correctness of the contents of e-forms and enclosure attached with the e forms.

In case the professional gives a false certificate or omits any material information knowingly, he is liable for punishment under the provisions of the Companies Act, 2013 as well as liable for professional and other misconduct.

This chapter covers the various aspects which is to be considered by the professional while certifying the e-forms. It is the duty of professional to maintain the ethical and professional standards while certification of e forms.

CONCEPT OF PRE-CERTIFICATION

Pre-certification means certification of correctness of any document by a professional including Company Secretary in Practice, before the same is filed with the Registrar in terms of the requirements of the Companies Act, 2013 (hereinafter referred to as “the Act”). Pre-certification was introduced to avoid registration delays and eventually evolved to check correctness of documents filed by professionals. The professional checks the correctness of the particulars stated in the prescribed forms after due consideration of the provisions of the Act and the Rules made thereunder. He also ensures that the particulars stated in the form are in agreement with the books and records of the company. If he notices any defect or finds that the information provided in the form is incomplete or defective, he appropriately advises/provides guidance for completion of document/rectification of defect and makes pre-certification only after completion of documents/rectification of such defects.

Pre-certification acts as a pre-emptive check to ensure that the particulars stated in the form or return are as per the books and records of the company and are true and correct. This would mean that the Registrar can rely on the certification of the Company Secretary in practice and may take the document on record without further examination. Thus, Pre-certification by a Company Secretary in practice ensures that no form or return is filed in the Office of Registrar of Companies which is defective or incomplete.

On the other hand, disclosure of information to shareholders is a very important requirement under the good governance mechanism with a view to protect the interests of the shareholders and other stakeholders and to ensure better governance. Accordingly, the Act has stipulated stringent measures and requirements for disclosure, included in financial statements, Board’s report and annual return. The Act has also prescribed onerous duties and responsibilities on the Director of a company as well as the Company Secretaries. The punishment for violation of provisions of the Act has also been enhanced under the Act to ensure the correctness of information filed becomes very critical.

The introduction of pre-certification by an independent professional in the e-form is aimed at self-regulations of companies and reduce the involvement of government machinery, i.e. the Registrar of Companies. Once an e-form has been pre-certified by a professional towards its authenticity based on the particulars contained in the books of accounts and records of the company, same can be taken on record without further examination.

If a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under the provisions of the Act as well as liable for professional or other misconduct under Company Secretaries Act, 1980.

HISTORICAL BACKGROUND

Pre-certification was introduced after detailed deliberations and this has been refined over time. Though it initially aimed at avoiding delays in Registration of charge and other Documents, its scope was expanded to authentication and verification of documents being filed with the MCA, in view of the benefits from such pre-certification.

With a view to avoid delay in the Registration of documents, MCA (the then Department of Company Affairs) on the initiative taken by the Institute of Company Secretaries of India issued two circulars advising the Registrars of Companies to take on record documents that are filed by companies or the creditors concerned, duly certified as correct by a Company secretary/ Chartered accountant/ Cost Accountant in practice. The circulars read as under: –

Delay in Registration of Charges (Issued by the Ministry of Industry, Department of Company Affairs, vide No. 1/1/90 CL.V. dated 5-9-1990; Circular No. 14/90).

“I am directed to say that with a view to taking on record the documents relating to charges/modification of charges/satisfaction of charges, it has been decided that as and when the aforesaid documents are filed by the companies or the creditors concerned, duly certified as correct by a Chartered Accountant/Cost Accountant/

Company Secretary in practice, the same may be taken on record within a reasonable period of say, ten (10) days. You are also advised that in case the relevant certificate of charge, etc. is not collected by the company's representative concerned within seven (7) days thereafter, the same may be sent by post. A copy of this circular is being endorsed to all the three professional Institutes with a request to suitably advise their members to ensure that the documents certified by them have been completely and correctly filled in".

Delay in Registration of Documents (Issued by the Ministry of Industry, Department of Company Affairs, vide Nos.1/3/ 91-CL.V; Circular No.5/91 dated 26-2-1991).

"This has reference to this Department's Circular No. 14/90 dated 5-9-1990 on the above mentioned subject. It has been decided that all documents required to be filled with you by companies be taken on record within a reasonable period, say, ten days, if the same are duly certified as correct by a Company Secretary/Chartered Accountant/ Cost Accountant, in practice."

The Department Related Parliamentary Standing Committee, which examined the Companies (Second Amendment) Bill, 1999, while endorsing the pre-certification in its 64th Report in 2000, had observed that verification of compliances with the provisions of the Companies Act, 1956 by a Company Secretary in practice was necessary.

The High Level Committee on Corporate Audit and Governance (Naresh Chandra Committee) in its report in 2002, while observing wide gap between prescription and practice, recommended a system of pre-certification by Company Secretaries to remove defect in documents so that these could be taken on record immediately and to reduce workload on Ministry.

It was also recommended that the system should provide for monetary and other penalties on Company Secretaries who certify the forms incorrectly, even though error or oversight.

Accordingly, the Companies (Amendment) Bill, 2003 introduced in the Rajya Sabha sought to add a new Section 383C to provide that all documents, returns, forms required to be filed with the Registrar or any statutory authority shall be pre-certified by a company secretary in practice.

In the meantime, the Government came out with the Concept Paper for revamping of Company Law on August 8, 2004 containing a model codified company law which incorporated the provisions of section 383C of the Companies (Amendment) Bill, 2003.

After enactment of the Companies Act, 2013, the provision of Pre-certification was introduced in the Companies (Registration Offices and Fees) Amendment Rules, 2014 [Sub-rule (12) of Rule 8, inserted by Notification No. G.S.R. 297(E) dated 28th April, 2014].

The requirement of authentication of documents prescribed under Rule 8 of the Companies (Registration Offices and Fees) Rules, 2014, elaborates on the responsibility of professionals certifying the forms. The professional certifying the form must verify whether all the requirements as per the provisions of the Act and the rules made thereunder have been complied with and all the attachment to the forms have been duly signed/authenticated, scanned and attached completely and legibly in the PDF Format.

Various Certification by Company Secretary in Practice

The e-form should be certified by a Company Secretary (in whole-time practice) or Cost Accountant (in whole-time practice) or Chartered Accountant (in whole-time practice) by digitally signing the E-Form.

Rule 8(12) the Companies (Registration Offices and Fees) Rules, 2014 inserted by the Companies (Registration Offices and Fees) Amendment Rules, 2014 vide G.S.R 297(E) dated 28 April, 2014 reads as under:

(12) (a) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice, namely: –

INC-21, INC-22, INC-28, PAS-3, SH-7, CHG-1, CHG-4, CHG-9, MGT-14, DIR-6, DIR-12, MR-1, MR-2, MSC-1, MSC-3, MSC-4, GNL-3, ADT-1, NDH-I, NDH-2, NDH-3;

(b) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified in the following manner, namely: –

- (i) GNL-1 - (Form for filing an application seeking approval from Registrar of Companies in e-form GNL-1 for different purposes under Companies Act, 2013) Optional pre-certification by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant in whole-time practice;
- (ii) DPT-3 - (Return of Deposits) Certification by Auditors of the company;
- (iii) MGT-10 - (Changes in shareholding position of promoters and top ten shareholders) Certification by a Company Secretary in whole-time practice; (**Section 93 omitted by Companies Amendment Act, 2017**)
- (iv) AOC-4 - (For filing financial statement and other documents with the Registrar) certification by the Chartered Accountant or the Company Secretary or as the case may be by the Cost Accountant, in whole-time practice;

(c) E-form DIR-3 shall be filed along with attestation of photograph, identity proof and proof of residence of the applicant by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in practice.

Further, Section 92 of the Companies Act, 2013 provides that the Annual Return of the company in form MGT-7 shall also be signed the company secretary, or where there is no company secretary, by a company secretary in practice.

Also, rule 11(2) of the Companies (Management and Administration) Rules, 2014 provides that the annual return, filed by 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, shall be certified by a Company Secretary in practice and the certificate shall be in Form No. MGT-8.

The recently e-form DIR-3-KYC under Rule 12A of The Companies (Appointment and Qualification of Directors) Rules, 2014 digitally signed by a Chartered Accountant/ Cost Accountant or Company Secretary in whole-time practice.

The Form 2 under rule 11 of LLP Rules shall be signed by Advocate / Company Secretary / Chartered Accountant / Cost Accountant in practice.

The Form 3 under rule 21 of LLP Rules relating to Information with regard to Limited Liability Partnership Agreement and changes shall be signed by Company Secretary in practice/ Chartered Accountant in practice / cost Accountant in practice.

The Form 4 under rule 8, 10(8), 22(2) and 22(3) relating to Notice of appointment of partners/ designated partner and changes among them, intimation of DPIN by the LLP to Registrar and consent of partner to become a partner /designated partner signed by Company Secretary in practice/ Chartered Accountant in practice /cost Accountant in practice.

The Form 11 under rule 25(1) of LLP Rules relating to Annual Return of Limited Liability Partnership Certified by the company secretary in practice where the total obligation of contribution of partners of the LLP exceeds Rs. 50 lakhs or turnover of LLP exceeds Rs.5 crores, then the eForm needs to be certified by a Company Secretary in whole time practice.

FORM 15 under rule 17 of the LLP Rules relating to Notice of change of place of registered office certified byCompany Secretary in practice/ Chartered Accountant in practice /cost Accountant in practice.

Under Regulation 40 (9) of SEBI (LODR) Regulations, every listed company need produces a certificate from a practicing company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgment for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.

Under Regulations 24A of SEBI (LODR) Regulations, Every listed entity and its material unlisted subsidiaries incorporated in India is required to undertake secretarial audit and annex with its annual report, a secretarial audit report, given by a company secretary in practice, in form MR-3 as prescribed under section 204 of the Companies Act, 2013 with effect from the year ended March 31, 2019.

Additionally, the regulations also require for the Annual secretarial compliance report on an annual basis covering a broad check on compliance with all laws applicable to the entity, SEBI Regulations and circulars/guidelines issued thereunder, consequent to which, the PCS shall submit a report to the listed entity in the format prescribed by SEBI . The annual secretarial compliance report shall be submitted by the listed entity to the stock exchanges within 60days of the end of the financial year.

Under regulation 55A SEBI (Depositories and Participants) Regulations, 1996, Listed entities are required to submit Reconciliation of Share Capital Audit Report on a quarterly basis to the stock exchanges audited by a qualified chartered accountant or a practicing company secretary for the purpose of reconciliation of share capital held in depositories and in physical form with the issued / listed capital. The Reconciliation of Share Capital Audit Report is required to be submitted to the stock Exchange within 30 days from the end of the Quarter under regulation 55A of the SEBI (Depositories and Participants) Regulations, 1996.

Apart from the above the Company secretaries provide various other reports and certification services including the Valuations report, Corporate Governance certificate, Search Reports, Due diligence Report etc.

AUTHENTICATION OF DOCUMENTS

As per the Rule 8(1), (2) & (5) of Companies (Registration Office and fee) Rules, 2014 provides that all electronic forms are required to be authenticated by authorised signatories using digital signatures. The e-forms are required to be authenticated on behalf of the company by the Managing Director or Director or Company Secretary or other key managerial personnel. In case of any change in directors or company secretary, the form relating to appointment of such directors or company secretary is required to be filed by continuing director or secretary of the company.

As per Rule 8(6), scanned image of documents must be of the original signed documents relevant to the e-forms and the scanned document image shall not be left blank without bearing actual signature of authorised person.

As per rule 8(7), the person signing the form and the professional certifying the form are responsible to ensure that all the required attachments relevant to the form have been attached completely and legibly to the forms or applications or returns filed as per the Act and the rules.

POINTS TO BE KEPT IN MIND WITH REGARD TO PRE-CERTIFICATION

It is duty of the Company Secretary in practice to check and verify thoroughly the correctness of the contents of the form before certifying it as correct. The members in practice are, accordingly, expected to exercise due care, diligence and skill, while performing the duty of pre-certification.

Pre-certification of forms is, therefore, not a routine or mechanical exercise but a serious task and involves work calling for sound application of mind in verifying the averments made in the respective forms after due consideration of the provisions of the Act read with the relevant rules.

Before undertaking the work relating to pre-certification of forms, a Company Secretary in practice should thoroughly read the requirements of the provisions of the Act, the Rules made there under and familiarize himself with the actual practices that are followed in this regard. He should also:

- Ensure that letter of engagement/Board Resolution authorizing the professional for the particular assignment by the company is obtained.
- Maintain a physical/scanned copy of all documents verified (subject to confidentiality requirement).
- Obtain the signature(s) of the authorised signatories on the e-forms in presence of the professional.
- Ensure that all relevant documents and attachments in the form are legible & visible.

DO'S AND DON'TS WHILE FILLING AND FILING OF E-FORMS

- Before filling of e-forms, the professional should go through the instruction kit of the respective e-form provided by the MCA on MCA-21 portal.
- Ensure that latest version of the e-forms has been downloaded from the MCA Website;
- DIN is mandatory for e-filing of documents. Therefore, the professional should ensure that the details related to DIN of the Directors has been updated on the MCA Portal;
- Digital Signature is mandatory and same shall be registered on the MCA Portal before its first use;
- Check Master Data of the company before filing any documents.
- The attachments to the e-forms should be complete and all pages of the attachment should be page numbers and shall be attached in order.
- Don't wait for the last days or the due date of the filing of e-forms.
- Don't fill up the forms in hurry, ensure that all the entries in the forms are correct and as per the supporting documents to be attached.
- Option for revision/cancellation of e-forms is not available on MCA Portal once it is taken on Record.
- Don't forget to pay the filing fees before the expiry date of the challan as non-payment of fees liable for cancellation of transaction.
- Keep track of the various events of the client's company and encourage companies to keep the updated filing to avoid regulatory actions.
- Select correct category to download e-Form for respective services;
- Attach the required documents duly scanned or converted into PDF with minimum size as possible;
- Use various inbuilt utilities like "PREFILL" and complete the form by clicking on "CHECK" and "PRE-SCRUTINY" options.
- Check the date of resolution and minute book, which authorizes the Director/Secretary before filling the date of resolution in the form.
- DSC used by Director/ Secretary/Signatory should be same as per authority delegation by the Board etc., as the case may be.

COMMON ERRORS IN E-FILING

- Digital signature is not registered / expired.
- Payment of challan not done before the expiry date;
- Duplicate Payments has been made.
- Excess size of the form.
- Approval status of e-forms is not verified.

- Status of resubmission of e-forms
- Use of outdated version of e-form;
- Incorrect particulars in the e-form;
- Using older versions of Adobe and Java.

PREPARATION BEFORE CERTIFICATION

Professional in Practice before undertaking the work relating to Pre-certification should thoroughly read the requirements of the provisions of the Companies Act, 2013 and Rules made thereunder and familiarize himself with the actual practices that are being followed in this regard. He should particularly ensure the following:

- Ensure that Letter of Engagement/Board Resolution authorizing the professional for the assignment by the company to be obtained (Where the statutory requirement is there for the board resolution or general meeting resolution then a copy of the extract of such resolution shall be obtained by PCS. Wherever the instance is possible it is recommended to record such appointment in the Minutes of the Board meetings).
- Maintain a physical/scanned copy of all documents verified (subject to confidentiality requirement).
- Ensure that all relevant documents and attachments are legible & visible.
- Verification of the documents from the original records of the company.
- Correctness of the records and the material departure from the facts.
- The form to be digitally signed by the Director or person authorized by the company.
- Before certification of any form, the person should be aware about the relevant provisions under the Act and Rules made thereunder, Process to be followed by the company, approval if any required etc.

REGISTER OF CERTIFICATION

For the purpose of maintaining quality of attestation /certification services provided by Company Secretaries in Practice, every Practicing Company Secretary should maintain a register regarding attestation/certification services provided by him. The Practicing Company Secretary should maintain the register for the all attestation /certification services, which includes:

1. Signing of Annual Return (MGT-7)
2. Certification of Annual Return (MGT-8)
3. Issue of Secretarial Audit Report (MR-3)
4. Certification of E forms of MCA under Companies Act, 2013 / LLP Act, 2008
5. Internal Audit of Depository Participants/ portfolio Manager/ Stock Broker
6. Annual Compliance auditor under SEBI (Research Analyst) Regulations, 2014
7. Issue of certificate of Securities Transfers in compliance with the Listing Agreement with Stock Exchanges.
8. Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D&CC/FITTC/Cir-16/2002 dated December 31, 2002.
9. Conduct of Internal Audit of Operations of the Depository Participants.
10. Corporate Governance Certification under SEBI (LODR) Regulations, 2015

11. Information relation to E forms certified and signed.
12. Register of various reports issued.

PEER REVIEW

The Institute of Company Secretaries of India provides a mechanism of Peer Review of their Members in Practice to enhance the quality of attestation services, to enhance credibility and provide competitive advantage and provide a forum for Guidance and knowledge sharing.

It is a process for examining the work performed by one's equals (peers) and to understand the systems, practices and procedures followed by the Practice Unit and to give suggestions, if any, for further improvement. Each Practice Unit would be required to be peer reviewed at least once in a block of five years. The Practicing Company Secretary/Firm may apply voluntarily to be peer reviewed or it may be done through random selection by the Peer Review Board.

The peer review includes the following services by the company secretaries in practice:

- (i) Certification/ Signing of Annual Return pursuant to section 92 of the Companies Act, 2013.
- (ii) Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013
- (iii) Issuance of Certificate of Securities Transfers in Compliance with the LODR with Stock Exchanges.
- (iv) Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D & CC/Cir-16/2002 dated December 31, 2002.
- (v) Conduct of Internal Audit of Operations of the Depository Participants.
- (vi) Compliance Certification under LODR.
- (vii) Attestation services of Form AOC 4, MGT 7, DIR 12, SH7 and PAS 3 filed with the ROC.
- (viii) Such other services as decided by the Council of ICSI under the scope of peer review from time to time.

Thus, every Company Secretaries in Practice/Firm should maintain adequate records and documents evidencing that pre certification/ attestation have done with due care and diligence.

The main objective of Peer Review is to ensure that in carrying out their attestation services and professional assignments, the PCS (a) comply with the Technical Standards laid down by the Institute and (b) have in place proper systems (including documentation systems) for maintaining the quality of the attestation services work they perform. The Council has specified in these guidelines for Peer Review, the Technical Standards in relation to which peer review is to be carried out. Peer review does not seek to redefine the scope and authority of the Technical Standards specified by the Council but seeks to enforce them within the parameters prescribed by the Technical Standards.

Peer Review is directed towards maintenance as well as enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements. Essentially, through a review of attestation services engagement records, peer review identifies the areas where a practising member may require guidance in improving the quality of his performance and adherence to various requirements as per applicable Technical Standard.

SIGNING AND CERTIFICATION OF ANNUAL RETURN

The Companies Act, 2013 provides a new and significant area of practice for Company Secretaries, it also casts immense responsibility on the company secretaries. Company Secretaries must take care while certifying the Annual Return. Any failure or lapse on the part of PCS may attract penalty both under the Companies Act, 2013 as well as under the Company Secretaries Act, 1980 for professional or other misconduct.

Time and Mode of Appointment of Practicing Company Secretary

With a view to carry out the voluminous work involved before certifying the Annual Return and also keeping in mind the fact that an extract of annual return based on the annual return is also required to be prepared before the annual general meeting which forms part of Board's report, it will be in the fitness of things if a PCS is appointed by the Board, at the beginning of the respective financial year. The contents to be verified are quite exhaustive and the facts and figures in the Annual Return should match with the financial statements and other statutory registers and records.

Scope and Extent of work for Practicing Company Secretary

For the purpose of certification, PCS should carry out a scrutiny of the data available and check the correctness of the same. Since almost all the events happened between closure of two financial years i.e., between 1 April – 31 March or as approved by Tribunal are captured in the Annual Return, the PCS should be prudent in understanding the events and its impact and consequences, while certifying the same.

PCS should carry out a detailed scrutiny and cross verification of documents. For ensuring the correctness of information contained in the Annual Return, the primary source documents should be looked into. While doing the detailed scrutiny, he may rely on certified copies of the resolutions, forms, and agreements as also certificates from the management.

Method of Verification

PCS should ask the company to give him access to various documents and books including the Annual Reports of the previous financial years, Register of Members/ debenture holders and all other statutory registers, the minutes books, copies of forms and returns filed with the Registrar of Companies etc. and other documents which he considers essential for the purpose of verification.

Documents to be Obtained/ Verified before Certification of Annual Return by Company Secretary in Practice

1. Memorandum and Articles of Association.
2. Forms & receipts filed with the Registrar of Companies.
3. Statutory Registers
 - Record of Private Placement under PAS-5 (Section 42)
 - Register of Members (Section 88)
 - Shareholders -MGT-1
 - Debenture holders -MGT-2
 - Register of Directors & their Shareholding (Section 170)
 - Register of Key Managerial Personnel (Section 170)
 - Register of Related Party Contracts under MBP -4 (Section 188)
 - Register of Loan and Investment under SH-12 (Section 186)

- Register of Deposit- (Section 73 and 76 read with rule 14)
 - Register of Charge under CHG-10. (Section 85)
 - Register of Securities
 - Register of Employee Stock Option under SH-6 (Section 62)
 - Register of Buyback under SH-10 (Section 68)
 - Register of Sweat Equity shares under SH-3 (Section 62)
4. Minutes of the Meetings
 - Board Meeting
 - General Meeting
 - Committee Meeting
 - Creditors Meeting
 - Debenture holders Meeting
 - Court convened meetings for the purpose of Restructuring and Amalgamation
 - Postal ballot minutes
 5. Notices and agenda papers for convening meetings of the Board and Committees thereof.
 6. Attendance Registers of all meetings.
 7. Copy of Latest Financial Statements along with the Boards Report and Auditors Reports.
 8. Copy of Notice of Annual General Meeting/ Extraordinary General Meetings/Postal Ballots/Court convened meetings/Creditors meetings and debenture holders meeting.
 9. Shareholder List in Compact Disc (CD) in PDF Format, details of Share Transfers taken place between close of the previous financial year and close of the financial year to which Annual Return relates, Controls of the Data as on the Date of Annual General Meeting of the Company or the Beneficial Positions as on close of financial year downloaded from the records of the Depository participants by Registrar Transfer Agent (RTA) of the Company on record / book closure date prior to AGM.
 10. Certificate from RTA stating the number of shareholders as on the close of the financial year.
 11. Indebtedness Certificate signed by Company Secretary/ CFO/Statutory Auditors of the Company.
 12. Change of name of the company, change in the face value of the shares 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.
 13. Board Resolution for any type of corporate actions taken by the Company.
 14. Corporate Action Forms filed by the Company with Depositories.
 15. Shareholding pattern and its break up.
 16. Any orders received by the company, Director or officer from the High court or from any other regulatory body under any act.
 17. Other Statutory Registers and Records.
 18. List of Promoters.
 19. Listing and Trading Approval(s) from Stock Exchanges, Credit Confirmation from Depositories namely

NSDL and CDSL respectively/ confirmation from both depositories in respect of allotment of equity shares of the Company during the period between the previous AGM date and current AGM date. 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, change in ISIN of the Company and the Scrip Code/ Symbol of the Company, etc.

Detailed Scrutiny of Annual Return

The PCS is required to be considerably responsible, since he/she is bound by the certification in the Annual Return. A very pertinent question which arises for consideration is the extent of detailed verification that has to be resorted to before certifying the Annual Return.

Where as in case of a Balance Sheet certified by the Statutory Auditor, the Cost Statements certified by a Cost Auditor, the statement of consumption of materials certified for the Customs and Central Excise Authorities, or the statement of exports for the purpose of export incentives, a major source of dilemma for the professional concerned is the determination of the extent of detailed scrutiny required before satisfying himself that the statement certified by him is correct.

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 generated by the company, in arriving at 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. Similarly, while certifying the list of past and present shareholders given in the Annual Return, a PCS cannot be expected to check every folio of the Registrar 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 filing the documents.

Therefore, certain techniques of sample checking and test checking should be resorted to before forming a reasonable opinion that the document being certified projects a true and fair view of the state of affairs. There are no specific modalities or stringent test practices applicable for Certification of Annual Return. However, the following guiding principles can be adopted while deciding about the extent of checking that is required.

- (i) The need for every detailed checking is greatly reduced if PCS confirms that 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 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.

To take the example of share transfers again, 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.

- (iii) '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 the ultimate responsibility of the document certified will rest with the professional. 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.

Certification with reservation /qualification /observations /adverse remarks

A PCS may certify the Annual Return subject to certain reservations /qualifications/ observations/adverse remarks by way of an annexure to his certificate. However, this course of action can only be resorted to in case where material facts are not stated correctly and completely in the Annual Return or where the company has not complied with the provisions of the Companies Act.

While signing of the Annual Return of a company by a Company Secretary or a Company Secretary in practice should also observe the guidance note on the Certification of the Annual Return as published by the ICSI and take the appropriate professional judgments wherever necessary.

It is the duty of the signing professional to take the copy of the records and record such relevant facts upon which he has taken his professional judgment while signing the form.

While the certification of Annual Return in Form No MGT-8, the certifying professional should observe all the statements in the true and fair manner. It is the duty of the professional to give the observation, limitation and disclaimer as may be required and appropriate for the certification.

SIGNING OF ANNUAL RETURN (MGT-7)

Annual Return is required to be signed by a Director and the Company Secretary, or where there is no company secretary, by a company secretary in practice.

As per the proviso to section 92(1), the Annual Return of One Person Company and Small Company shall be signed by the Company Secretary or where there is no company secretary, by the director of the company.

While signing the Form MGT-7 (Annual Return) Company Secretary/Company Secretary in practice and Director certifies that:

1. The return state the facts, as they stood on the date of the closure of the financial year aforesaid correctly and adequately.
2. Unless otherwise expressly stated to the contrary elsewhere in this return, the Company has complied with applicable provisions of the Act during the financial year.

(Further, in Point No. XI of Form MGT-7 also provides, "Whether the company has made Compliances and Disclosures in respect of applicable provisions of the Companies Act, 2013 during the year")

In Case of the Private Company:

3. The company has not, since the date of the closure of the last financial year with reference to which the last return was submitted or in the case of a first return since the date of the Incorporation of the company, issued any invitation to the public to subscribe for any securities of the company.
4. Where the annual return discloses the fact that the number of members, (except in case of a one person company) of the company exceed two hundred, the excess consists of wholly of persons who under second proviso to clause (ii) of sub - section (68) of section 2 of the Act are not to be included in reckoning the number of two hundred.

Further, Company Secretary/ Company Secretary in Practice and Authorised Director declares that -

1. Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the Company.
2. All the required attachments have been completely and legibly attached to this form.

When a company secretary or company secretary in practice signs the annual return, he certifies that the facts stated and the material furnished as attachment to the form are duly and fully (correctly and adequately) stated and given.

Further, he has to state that the company has made compliances as well as disclosures in respect of applicable provisions of the Companies Act during the year, also he should give reasons or observations in respect of non-compliances.

Annual Return Signing Requirement

- **Small company and one Person Company**

To be signed by- Company Secretary or where no Company Secretary by Director.

- **Others**

To be signed by- Director and Company secretary or where there is no Company Secretary, by a Company Secretary in practice.

CERTIFICATION OF ANNUAL RETURN (MGT-8)

Under sub-section (2) of section 92 of the Act read with rule 11(2) of the Companies (Management and Administration) Rules, 2014, the Annual Return of a listed company or of a company having a paid up share capital of Rs. 10 Crores or more or turnover of Rs. 50 Crores or more shall be certified by a company secretary in whole time practice in the Form No. MGT-8.

Annual Return certification by Company Secretary in practice:

- Every listed company
- Every company having paid-up capital of Rs. 10 crore or more of
- Every company having turnover of 50 crore rupees or more

While certifying the Form No. MGT 8, the practicing company secretary provide certification relating the following points:

- A. the Annual Return discloses the facts as at the close of the financial year correctly and adequately; and
- B. the Company has complied with the provisions of the Act & Rules made there under during the financial year in respect of:
 1. Its status under the Act;
 2. Maintenance of registers/records & making entries therein within the time prescribed therefore
 3. Filing of forms and returns as stated in the Annual Return, with the Registrar of Companies, Regional Director, Central Government, the Tribunal, Court or other authorities within / beyond the prescribed time;
 4. Calling/ convening/ holding meetings of Board of directors or its committees if any, and the meetings of the members of the company on due dates as stated in the annual return in respect of which meetings, proper notices were given and the proceedings including the circular resolutions and resolutions passed by postal ballot, if any, have been properly recorded in the Minute Book / registers maintained for the purpose and the same have been signed;
 5. Closure of Register of Members / Security holders, as the case may be.
 6. Advances/loans to its directors and/or persons or firms or companies referred in section 185 of the Act;

7. Contracts/arrangements with related parties as specified in section 188 of the Act;
8. Issue or allotment or transfer or transmission or buy back of securities/ redemption of preference shares or debentures/ alteration or reduction of share capital/ conversion of shares/ securities and issue of security certificates in all instances;
9. Keeping in abeyance the rights to dividend, rights shares and bonus shares pending registration of transfer in compliance with the provisions of the Act;
10. Declaration/ payment of dividend; transfer of unpaid/ unclaimed dividend/ other amounts as applicable to the IEPF in accordance with section 125 of the Act;
11. Signing of audited financial statement and report of directors is as per section 134 of the Act;
12. Constitution/ appointment/ re-appointments/ retirement/ filling up casual vacancies/ disclosures of the Directors, Key Managerial Personnel and the remuneration paid to them;
13. Appointment/ reappointment/ filling up casual vacancies of auditors as per the provisions of section 139 of the Act;
14. Approvals required to be taken from the Central Government, Tribunal, Regional Director, Registrar, Court or such other authorities under the various provisions of the Act;
15. Acceptance/ renewal/ repayment of deposits;
16. Borrowings from its director, members, public financial institutions, banks and others and creation /modification /satisfaction of charges in that respect, wherever applicable;
17. Loans and investments or guarantees given or providing of securities to other bodies corporate or persons falling under the provisions of section 186 of the Act;
18. Alteration of the provisions of the memorandum and / or articles of association of the Company.

CONCEPT OF DIFFERENT PROFESSIONALS FOR SIGNING AND CERTIFICATION

While the signing and certification of the annual return, it is advisable to have different Professionals for Signing and Certification as maker and checker concept for the independent verification of the Annual Return. These two different signing mechanisms include one for the purpose of signing under section 92(1) and the other for certification under section 92(2) of the Companies Act, 2013.

However the where a company is having a Company Secretary then signing of the annual return as per section 92(1) shall be done by the Company secretary in employment only, but not by the Company Secretary in Practice.

The return has to be filed with the Registrar of Companies within 60 days from the date of Annual General Meeting. If the Annual General Meeting is not held in any year, the return has to be filed within 60 days from the date on which Annual General Meeting should have been held together with the statement specifying the reasons for not holding the Annual General Meeting, on payment of such fee or additional fee as prescribed (Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014).

Whether non-filing of Annual Return is a compoundable

Offence in respect of default in filing Annual Return is compoundable (section 441), in accordance with the procedure laid down in the Code of Criminal Procedure, 1973 for compounding of offences. If any company fails to file its annual return under section 92 (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.

Filing Annual Return in Absence of Annual General Meeting

Where no Annual General Meeting is held in a particular year, the Annual Return has to be filed within 60 days from the last day on which the meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403. [Section 92(4)]

Consequently, the company cannot excuse itself from the obligation on the plea of the Annual General Meeting not having been held. As per Section 403 if the Annual return under section 92 is not filed within the due date the same can be filed on payment of additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies:

Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable.

Also, Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

Thus, management cannot escape from the responsibility of filing the return, if the Annual General Meeting is not held. Similarly the responsibility cannot be abandoned even if the company is inoperative. This section casts an important obligation on the part of management to file the returns and can be relinquished only when the company is wound-up or its name struck-off from the Register maintained by the Registrar of Companies

CORPORATE GOVERNANCE CERTIFICATION

This certificate on the compliance of conditions of Corporate Governance by the Company, is issued under the regulations 17 to 27 and clauses (b) to (i) of regulation 46(2) and paras C and D of Schedule V of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (the Listing Regulations). The certificate can be issued either by the auditors or practicing company secretary and shall be annexed to with the director's report.

Further, Regulation 27(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), specifies that the listed entity shall submit quarterly compliance report on corporate governance in the format specified by the Board from time to time to recognised Stock Exchange(s) within fifteen days from close of the quarter.

Accordingly, the different formats for Compliance Report on Corporate Governance has been prescribed for Quarterly basis, and report to be submitted at the end of the financial year (for the whole of financial year) and for reports which is to be submitted within six months from end of financial year. Which may be submitted along with second quarter report.

Regulation 17(3) of the SEBI (LODR) Regulations provide that the board of Director shall periodically review compliance reports pertaining to all laws applicable to the listed entity, as prepared by the company as well as steps taken by the company to rectify instances of non-compliance.

Accordingly, the following reports should also be placed before the board of directors of the listed entity in terms of requirement under Regulation 17(3) of Listing Regulations:-

- Periodical Compliance Reports prepared by the company;
- Secretarial Audit Report prepared in accordance with Rule 9 of Companies (Appointment and

Remuneration of Managerial Personnel) Rules, 2014 under Section 204 of the Companies Act, 2013 in so far as it pertains to Securities Laws.

FORMAT OF THE QUARTERLY REPORTS

The Format of Quarterly Reports on Corporate Governance under LODR regulation is as under:

1. Name of Listed Entity
2. Ending
3. Composition of Board of Director

I. Composition of Board of Directors								
Title (Mr./ Ms.)	Name of the Director	PAN & DIN	Category (Chair- person/ Executive/ Non- Executive/ independent/ Nominee)	Date of Appoint- ment in the current term/ Cessa- tion	Ten- ure*	No of Directorship in listed Entities Including this Listed Entity (Refer Regulation 25(1) of Listing Regulations	Number of memberships in Audit/Stake- Holder Committee(s) Including this Listed Entity (Refer Regulation 26(1) of Listing Regulations)	No of post of Chairperson in Audit/Stake- Holder Committee held in listed Entities including this listed entity (Refer Regulation 26(1) of Listing Regulations)
<p>\$ PAN number of any director would not be displayed on the website of Stock Exchange & Category of directors means executive/non-executive/independent/Nominee. If a director fits into more than one category write all categories separating them with hyphen</p> <p>* to be filled only for Independent Director. Tenure would mean total period from which Independent director is serving on Board of directors of the listed entity in continuity without any cooling off period.</p>								
II. Composition of Committees								
Name of Committee						Name of Committee Members	Category (Chairperson/ Executive/Non-Executive/ independent Nominee)\$	
1. Audit Committee								
2. Nomination & Remuneration Committee								
3. Risk Management Committee (if applicable)								
4. Stakeholders Relationship Committee								
<p>&Category of directors means executive/non-executive/independent/ Nominee. If a director fits into more than one category write all categories separating them with hyphen</p>								
III. Meeting of Board of Directors								

Date(s) of Meeting (if any) in the previous quarter	Date(s) of Meeting (if any) in the relevant quarter	Maximum gap between any two consecutive (in number of days	
IV. Meeting of Committee			
Date(s) of meeting of the committee in the relevant Quarter	Whether requirement of Quorum met (details)	Date(s) of meeting of the committee in the previous quarter	Maximum gap between any two Consecutive meetings in number of days*
* This information has to be mandatorily be given for audit committee, for rest of the committees giving this information is optional			
V. Related Party Transactions			
Subject		Compliance status (Yes/No/NA) <small>refer note below</small>	
Whether prior approval of audit committee obtained			
Whether shareholder approval obtained for material RPT			
Whether details of RPT entered into pursuant to omnibus approval have been reviewed by Audit Committee			
Note <p>In the column "Compliance Status", compliance or non-compliance may be indicated by Yes/ No/N.A. For example, if the Board has been composed in accordance with the requirements of Listing Regulations, "Yes" may be indicated. Similarly, in case the Listed Entity has no related party transactions, the words "N.A." may be indicated.</p> <p>If status is "No" details of non-compliance is to be provided</p>			
VI. Affirmations			

1. The composition of Board of Directors is in terms of SEBI (Listing obligations and disclosure requirements) Regulations, 2015.
2. The composition of the following committees is in terms of SEBI(Listing obligations and disclosure requirements) Regulations, 2015
 - a. Audit Committee,
 - b. Nomination & remuneration committee
 - c. Stakeholders relationship committee
 - d. Risk management committee (applicable to the top 100 listed entities)
3. The committee members have been made aware of their powers, role and responsibilities as specified in SEBI (Listing obligations and disclosure requirements) Regulations, 2015.
4. The meetings of the board of directors and the above committees have been conducted in the manner as specified in SEBI (Listing obligations and disclosure requirements) Regulations, 2015.
5. This report and/or the report submitted in the previous quarter has been placed before Board of Directors. Any comments/observations/advice of Board of Directors may be mentioned here.

Name & Designation**Company Secretary / Compliance Officer / Managing Director / CEO Note:****Note:**

Information at Table I and II above need to be necessarily given in 1st quarter of each financial year. However if there is no change of information in subsequent quarter(s) of that financial year, this information may not be given by Listed entity and instead a statement "same as previous quarter" may be given.

Format to be submitted by listed entity at the end of the financial year (For the whole of financial year)

I. Disclosure on website in terms of Listing Regulations

Item	Compliance status Yes/ No/NA) refer note below
Details of business	
Terms and conditions of appointment of independent directors	
Composition of various committees of board of directors	
Code of conduct of board of directors and senior management personnel	
Details of establishment of vigil mechanism/ Whistle Blower policy	
Criteria of making payments to non-executive directors	
Policy on dealing with related party transactions	
Policy for determining 'material' subsidiaries	
Details of familiarization programmes imparted to independent directors	
Contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances	

email address for grievance redressal and other relevant details	
Financial results	
Shareholding pattern	
Details of agreements entered into with the media companies and/or their associates	
New name and the old name of the listed entity	

II Annual Affirmations

Particulars	Regulation Number	Compliance status (Yes/ No/NA) refer note below
Independent director(s) have been appointed in terms of specified criteria of 'independence' and/or 'eligibility'	16(1)(b) & 25(6)	
Board composition	17(1)	
Meeting of Board of directors	17(2)	
Review of Compliance Reports	17(3)	
Plans for orderly succession for appointments	17(4)	
Code of Conduct	17(5)	
Fees/compensation	17(6)	
Minimum Information	17(7)	
Compliance Certificate	17(8)	
Risk Assessment & Management	17(9)	
Performance Evaluation of Independent Directors	17(10)	
Composition of Audit Committee	18(1)	
Meeting of Audit Committee	18(2)	
Composition of nomination & remuneration committee	19(1) & (2)	
Composition of Stakeholder Relationship Committee	20(1) & (2)	
Composition and role of risk management committee	21(1),(2),(3),(4)	
Vigil Mechanism	22	
Policy for related party Transaction	23(1),(5),(6),(7) & (8)	
Prior or Omnibus approval of Audit Committee for all related party transactions	23(2), (3)	
Approval for material related party transactions	23(4)	

Composition of Board of Directors of unlisted material Subsidiary	24(1)	
Other Corporate Governance requirements with respect to subsidiary of listed entity	24(2),(3),(4), (5) & (6)	
Maximum Directorship & Tenure	25(1) & (2)	
Meeting of independent directors	25(3) & (4)	
Familiarization of independent directors	25(7)	
Memberships in Committees	26(1)	
Affirmation with compliance to code of conduct from members of Board of Directors and Senior management personnel	26(3)	
Disclosure of Shareholding by Non- Executive Directors	26(4)	
Policy with respect to Obligations of directors and senior management	26(2) & 26(5)	

Note:

1. In the column “Compliance Status”, compliance or non-compliance may be indicated by Yes/ No/N.A. For example, if the Board has been composed in accordance with the requirements of Listing Regulations, “Yes” may be indicated. Similarly, in case the Listed Entity has no related party transactions, the words “N.A.” may be indicated.
2. If status is “No” details of non-compliance may be given here. 3 If the Listed Entity would like to provide any other information the same may be indicated here.

III. Affirmations:

The Listed Entity has approved Material Subsidiary Policy and the Corporate Governance requirements with respect to subsidiary of Listed Entity have been complied.

Name & Designation

Company Secretary / Compliance Officer / Managing Director / CEO

Format to be submitted by listed entity at the end of 6 months after end of financial year along-with second quarter report of next financial year

I. Affirmations

Broad heading	Regulation Number	Compliance status (Yes/No/NA)refer note below
Copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report, business responsibility report displayed on website	46(2)	
Presence of Chairperson of Audit Committee at the Annual General Meeting	18(1)(d)	

Presence of Chairperson of the nomination and remuneration committee at the annual general meeting	19(3)	
Whether "Corporate Governance Report" disclosed in Annual Report	34(3) read with para C of Schedule V	

Note

1. In the column "Compliance Status", compliance or non-compliance may be indicated by Yes/No/N.A. For example, if the Board has been composed in accordance with the requirements of Listing Regulations, "Yes" may be indicated. Similarly, in case the Listed Entity has no related party transactions, the words "N.A." may be indicated.
2. If status is "No" details of non-compliance may be given here.
3. If the Listed Entity would like to provide any other information the same may be indicated here.

Name & Designation

Company Secretary / Compliance Officer / Managing Director / CEO

OBLIGATIONS AND PENAL PROVISIONS

Company Secretaries must take care while certifying the Annual Return. Any failure or lapse on the part of PCS may attract penalty under-

(i) Companies Act, 2013:

As per sub-section (6) of section 92 of the Act, If a company secretary in practice certifies the Annual Return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Further, company secretary in practice may also attract the provisions of Section 447, sections 448 and 449 of Companies Act, 2013.

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 per cent. of the turnover of the company, whichever 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:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Provided further that 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 fifty lakh rupees or with both.

Section 448 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 of the Act.

In view of this, a professional will be penalised under section 448 in case he makes the statement, which is false in any material particulars, knowing it to be false, or which omits any material fact knowing it to be material.

Authority to initiate action against Professionals

MCA vide its circular no. 10/2014 dated 07.05.2014 has clarified that Regional director/ ROC would initiate action under section 448 and 449 of the Act in the cases of submitting false or misleading or incorrect information.

Further, the cases u/s 448 and 449 may also be referred to the concerned Institute for conducting disciplinary proceedings against the errant member and the MCA may debar the concerned professional from filing any document on the MCA portal in future.

(ii) Company Secretaries Act, 1980

The Disciplinary Directorate of ICSI on receipt of any information or complaint arrive at a prima facie opinion on the occurrence of the alleged misconduct and Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he place the matter before the Disciplinary Committee of ICSI.

In the matters, which are placed before the Board of Discipline, and where the board is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: –

- (a) reprimand the member
- (b) remove the name of the member from the Register up to a period of three months;
- (c) impose such fine as it may think fit which may extend to rupees one lakh.

In the matters, which are placed before the Disciplinary Committee, and Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

- (a) reprimand the member;
- (b) remove the name of the member from the Register permanently or for such period, as it thinks fit;
- (c) impose such fine as it may think fit, which may extend to rupees five lakhs

PROFESSIONAL MISCONDUCT COVERED UNDER THE FIRST SCHEDULE

PART I: Professional misconduct in relation to Company Secretaries in Practice

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he—

- (1) Allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him;
- (2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed for the purpose of rendering such professional services from time to time in or outside India.

Explanation. – In this item, “partner” includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

(3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part;

(4) enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships;

(5) secures, either through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting–

- (i) any company secretary from applying or requesting for or inviting or securing professional work from another company secretary in practice; or
- (ii) a member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognized by the Central Government or may be recognized by the Council:

Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

(8) accepts a position as a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or result of such employment, except as permitted under any regulation made under this Act;

(10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act, 1956;

(11) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, anything which he is required to certify as a Company Secretary, or any other statements relating thereto.

PART II - Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

- (1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;
- (2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PART III - Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

- (1) not being a Fellow of the Institute, acts as a Fellow of the Institute;
- (2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;
- (3) while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV - Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if—

- (1) he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;
- (2) in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

PROFESSIONAL MISCONDUCT COVERED UNDER THE SECOND SCHEDULE

PART I - Professional misconduct in relation to Company Secretaries in Practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

- (1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;
- (2) certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice;
- (3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
- (4) expresses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;

- (5) fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity;
- (6) fails to report a material mis-statement known to him and with which he is concerned in a professional capacity;
- (7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;
- (8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;
- (9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;
- (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II - Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

- (1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;
- (2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer;
- (3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;
- (4) defalcates or embezzles moneys received in his professional capacity.

PART III- Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.

Further, with a view to ensure that the Company Secretary in practice carries out his work with due diligence, the Registrar may carry out scrutiny of Forms on random basis.

As per rule 8(9) of the Companies (Registration Officers and Fees) Rules, 2014, where any instance of filing document, application or return etc. containing a false or misleading information or omission of material fact, requiring action under section 448 or section 449 is observed, the person shall be liable under section 448 and 449 of the Act.

Further as per rule 8(10), without prejudice to any other liability, in the case of certification of any form, document, application or return under the act containing wrong or false or misleading information or omission of material fact or attachments by the person, the Digital Signature Certificate shall be de-activated by the central government till a final decision is taken in this regard.

As per MCA circular no. 10/2014 dated 07.05.2014, where any instance of filing of documents, application or return or form etc., containing false or misleading information or omission of material fact or incomplete

information is observed, the Regional Director or the Registrar as the case may be, shall conduct a quick inquiry against the professionals who certified the form and signatory thereof including an officer in default who appears prima facie responsible for submitting false or misleading or incorrect information pursuant to requirement of above said Rules, 15 days' notice may be given for the purpose.

The Regional Director or the Registrar will submit his/her report in respect of the inquiry initiated, irrespective of the outcome, to the E-Governance cell of the Ministry within 15 days of the expiry of period given for submission of an explanation with recommendation in initiating action under section 447 and 448 of the Act wherever applicable and also regarding referral of the matter to the concerned professional Institute for initiating disciplinary proceedings.

The E-Governance cell of the Ministry shall process each case so referred and issue necessary instructions to the Regional Director/ Registrar of Companies for initiating action under section 448 and 449 of the Act wherever prima facie cases have been made out. The E-Governance cell will thereafter refer such cases to the concerned Institute for conducting disciplinary proceedings against the errant member as well as debar the concerned professional from filing any document on the MCA portal in future.

The Registrar shall forward a fortnightly report to the concerned Regional Director as well as to the E-Governance Division. Thereafter, the Regional Director shall forward a consolidated report to the Joint Secretary E-Governance Division on or before 7th of every month.

CONSEQUENCES OF NON-FILING ANNUAL RETURN

For the Director

(1) If the company has not filed its Annual Return from the date by which it should have been filed with fee and additional fees, every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees. (Section 92)

(2) If the company has not filed its financial statement or Annual Return for continuous period of three financial years, then every person who is or has been director of that company shall not be eligible for re-appointment as Director of that company or appointed in any other company for a period of five years from the date on which the said company fails to do so. (Section 164(2))

(3) If in Annual Return, any Director or 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 punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 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. (Section 448)

Under section 245, the class of shareholders or depositors may file an application with the Tribunal alleging that the management or conduct of the affairs of any company are being conducted in a manner prejudicial to the interest of the company, its members or depositors. Such class action may include suite against the company, its directors, officers, experts or any other person for wrongful or fraudulent act. The order passed by the Tribunal shall be binding on the Company, its directors and officers.

For the Company

(1) If the company has not filed its Annual Return by which it should have been filed with fee and additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees

(2) If the Company has defaulted in filing Annual Returns for the immediately preceding five financial years, the Company may be wound up by the Tribunal. (Section 271)

(3) If the Company has not filed its Annual Return for last two financial years, it will be termed as “inactive company” [Section 455(1)]

(4) If the Company has not filed its Annual Return for two financial years consecutively, the Registrar shall issue notice to the Company and enter its name in the Register of Dormant Companies. [Section 455(4)]

Provisions and procedure for compounding of offences, which are punishable under Companies Act, 2013 are stipulated under Section 441.

Under section 441 of the Companies Act, 2013, any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by –

- (a) The Tribunal; or
- (b) where the maximum amount of fine which may be imposed for such offence does not exceed twenty five lakh rupees, by the Regional Director or any officer authorised by the Central Government,

Further, the offence punishable with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable and the offence which is punishable with imprisonment only or with imprisonment and also with fine are not compoundable.

Only those offences which are punishable with either penalty or with penalty or imprisonment are compoundable under Section 441. Therefore, offence which is specifically punishable only with imprisonment or with imprisonment and fine is non-compoundable.

Any offences punishable with fine only may be compounded by the Tribunal or where the maximum amount of fine which may be imposed for such offence does not exceed twenty five lakh rupees, by the Regional Director or any officer authorized by the Central Government.

LESSON ROUND UP

- While pre certification of e forms the professional checks the correctness of the particulars stated in the prescribed forms after due consideration of the provisions of the Act and the Rules made thereunder.
- The eform is required to be authenticated by authorised signatories such as Managing Director or Director or Company Secretary or other key managerial personnel as any be required in the form using digital signatures.
- Every professional before filling of e-forms should go through the respective provisions of the act and the instruction kit of respective eform.
- Annual Return of the every listed company, or company having paid-up capital of Rs. 10 crore or more, or company having turnover of 50 crore rupees or more, shall be certified by the Company Secretary in practice:
- Company Secretaries must take care while certifying the eforms. Any failure or lapse may also attract action under section 447, 448 and 449 of Companies Act, 2013.

LIST OF FURTHER READINGS

ICSI Publications:

1. Referencer on Pre certification of e forms

2. Guidance note on the Annual Return
3. Guidance note on Secretarial Audit
4. Guidance note on Annual Secretarial Compliance Report

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation)

1. Describe the various forms which are exclusively certified by the company secretary in practice under the Companies Act, 2013.
2. How the scrutiny of the annual return takes place and what are the guiding principles for scrutiny of annual return.
3. Describe the points covered in the Form MGT-8 which are needed to be certified,
4. List out the various disclosures required to be placed on website of the company in terms of listing regulations.
5. Describe the various actions covered under the first schedule as professional misconduct under Company Secretaries Act, 1980.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Lesson 7

Segment-wise Role of Company Secretaries

LESSON OUTLINE

- Introduction
- Company Secretary in Employment
- Company Secretary in Practice
- Overview of Various Industries
- National and International Development
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The Companies Act, 2013 has accorded an exalted status to a Company Secretary bracketing him as Key Managerial Personnel along with the Managing Director /CEO & CFO. The Insolvency Professionals, i.e. the IPR professionals, the Registered Valuers are just a few of the other roles played by Company Secretaries. CS as a governance professional is vital to nation building. A lot of activities by Company Secretaries fall within the ambit of the responsibility structure Ranging from ensuring compliance with the applicable laws and secretarial standards to guiding the directors, from conducting secretarial audits to representing the company before Regulators, from obtaining requisite approvals from designated authorities to assisting the Board.

After reading this chapter the student will understand the various roles played by the company secretaries in employment as well as in practice.

INTRODUCTION

The company secretaries play an important role as governance professionals in all types of corporates, whether it is a private company, public company, section 8 company, government company or so. In the recent international development in corporate governance, the role of company secretaries is not limited to the doing compliance with laws, regulations, standards, and codes; it is also about creating cultures of good practice.

With the increased role of company secretaries the company secretaries requires the increased technical skills and experience to know what corporate governance practices are needed in an organization and why. They also need the emotional intelligence, skills, and experience to ensure that they know how the practices typically would be implemented to work effectively.

In the later 90's the company secretaries are recognized as an designate officer of the company to maintain the record of the company whereas in the current scenario is company secretary is expected to provide professional guidance to shareholders, boards, individual directors, management and other stakeholders on the governance aspects of strategic decisions.

The company secretary act as a bridge for information, communication, advice, and arbitration between the board and management and between the organization and its shareholders and stakeholders.

To fulfill this role, the company secretary needs to be fully aware of the powers, rights, duties, and obligations of his entire business portfolio. In addition to providing advice and communication, the corporate secretary often called on to create and manage relationships between these different players in the corporate governance system. To carry out this role effectively, a company secretary needs to act with the highest integrity and independence in protecting the interests of the organization, its shareholders, and others with a legitimate interest in the organization's affairs. This level of responsibility calls for a thorough knowledge of the business environment in which the organization operates as well as of the laws, rules, and regulations that govern its activities. Company secretaries typically provide practical support to the chairman of the organization to ensure that board meetings are managed effectively. This typically would entail assisting the chairman with agenda development, ensuring that meetings are conducted in line with good governance and statutory and regulatory requirements, drafting minutes, and following up on implementation of decisions made by the board.

Accordingly, to understand the role of company secretary in the various segments, it is required to understand the role of company secretary in different capacities. Broadly the company secretary is having the opportunities in the following two domains:

1. Company Secretary in Employment
2. Company Secretary in Practice

The chapter covers the various roles of company secretaries based on the above categories.

COMPANY SECRETARY IN EMPLOYMENT

- **Appointment as Whole time Company Secretary**

As per Section 203 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every company having a paid-up share capital of five crore rupees or more is required to appoint a whole-time company secretary.

- **Company Secretary as Key Managerial Personnel (KMP)**

Company Secretary has been recognized as Key Managerial Personnel and has placed along with Managing Director (MD) or Chief Executive officers (CEO) or Manager, Whole time director(s) or Chief Financial Officer (CFO) under section 203 of the Companies Act, 2013. Accordingly, every listed

company and the every other public company having paid up share capital of ten crore rupees or more is required to appoint the whole time Company Secretary as the Key Managerial Personnel.

Functions & Duties of the Company Secretary includes -

Section 205 read with rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provide the following functions & duties on the Company Secretary includes-

1. to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
2. to ensure that the company complies with the applicable secretarial standards;
3. to discharge such other duties which includes:
 - 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;
 - to facilitate the convening of meetings and attend board, committee and general meetings and maintain the minutes of these meetings;
 - to obtain approvals from the board, general meeting, the government and such other authorities as required under the provisions of the Act;
 - to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
 - to assist the Board in the conduct of the affairs of the company;
 - to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices;
 - to discharge such other duties as have been specified under the Act or rules; and
 - such other duties as may be assigned by the Board from time to time.

Further, the Board of the company generally assigned the following duties to the company Secretaries:

1. Secretarial Functions:

- To ensure compliance of the provisions of Companies Law and rules made there-under, Secretarial Standards and other statutes and bye-laws of the company.
- To ensure that business of the company is conducted in accordance with its objects as contained in its memorandum of association.
- To ensure that affairs of the company are managed in accordance with its articles of association and the provisions of the Companies Law.
- To prepare the agenda in consultation with the Chairman and the other documents for all the meetings of the board of directors.
- To arrange with and to call and hold meetings of the board and to prepare a correct record of proceedings.
- To attend the broad meetings in order to ensure that the legal requirements are fulfilled, and provide such information as are necessary.
- To prepare, in consultation with the chairman, the agenda and other documents for the general meetings.
- To arrange with the consultation of chairman the annual and extraordinary general meetings of the company and to attend such meetings in order to ensure compliance with the legal requirements

and to make correct record thereof.

- To carry out all matters concerned with the allotment of shares, and issuance of share certificates including maintenance of statutory Share Register and conducting the appropriate activities connected with share transfers.
- To prepare, approve, sign and seal agreements leases, legal forms, and other official documents on the company's behalf, when authorised by the broad of the directors or the executive responsible.
- To advise, in conjunctions with the company's solicitors, the chief executive or other executive, in respect of the legal matters, as required.
- To engage legal advisors and defend the rights of the company in Courts of Law.
- To have custody of the seal of the company.

2. Management and Reporting functions of Company Secretary:

- Filling of various documents/returns as required under the provisions of the Corporate Laws.
- Proper maintenance of books and registers of the company as required under the provisions of the applicable laws.
- To see whether legal requirements of the allotment, issuance and transfer of share certificates, mortgages and charges, have been complied with.
- To convene/arrange the meetings of directors, on their advise.
- To issue notice and agenda of board meetings to every director of the company.
- To carry on correspondence with the directors of the company on various matters.
- To record the minutes of the proceedings of the meetings of the directors.
- To implement the policies formulated by the directors.
- To deal with all correspondence between the company and the shareholders.
- To issues notice and agenda of the general meetings to the shareholders.
- To keep the record of the proceedings of all general meetings.
- To make arrangement for the payment of the dividend within prescribed period as provided under the provisions of the Companies Law.

3. To maintain the following statutory books:

- Register of Transfer of Shares;
- Register of Buy-Backed Shares by A Company;
- Register of Mortgages, Charges etc.;
- Register of Members and Index thereof;
- Register of Debenture-Holders;
- Register of Directors And Other Officers;
- Register of Contracts;
- Register of Directors' Shareholdings and Debentures;
- Register of Local Members, Directors and Officers, In Case of a Foreign Company;

- Minute Books;
- Proxy Register;
- Register of Beneficial Ownership;
- Register of Deposits;
- Register of Director's Share Holding; and
- Register of Contracts, Arrangements and Appointments in which Directors etc. are interested.

4. Other duties:

The company secretary usually undertakes the following duties:

- Ensuring that statutory forms are filed promptly.
- Ensuring the Compliance with the Secretarial Standards.
- Providing members and auditors with notice of meeting.
- Filing of copy of special resolutions on prescribed form within the specified time period.
- Supplying a copy of the accounts to every member of the company, every debenture holder and every person who is entitled to receive notice of general meetings.
- Keeping the minutes of directors' meetings and general meetings. Apart from monitoring the Directors and Members minutes books, copies of the minutes of board meetings should also be provided to every director.
- Ensuring that people entitled to do so, can inspect company records. For example, members of the company are entitled to a copy of the company's register of members, and to inspect the minutes of its general meetings and to have copies of these minutes.
- Custody and use of the common seal. Companies are required to have a common seal and the secretary is usually responsible for its custody and use. (Common seals can be bought from seal makers)

● **Company Secretary as Compliance Officer**

Under the Regulation 6 of the SEBI (LODR) Regulations, 2015, A listed company is required to appoint a qualified company secretary as the compliance officer. The compliance officer of the Company is responsible for

- (a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
- (b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
- (c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
- (d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors:

However, the company secretary is also liable for ensuring compliance with SEBI (Prohibition of insider Trading) Regulations, 2015 including maintenance of various documents and also to ensure compliance of the SEBI Takeover Regulations. The requirement for appointment of Compliance officer is not applicable in case of units issued by mutual funds which are listed on recognised stock exchange(s) governed by the provisions of the

Securities and Exchange Board of India (Mutual Funds) Regulations 1996.

- **Company Secretary as a part of Senior Management**

The Regulation 16 of the SEBI (LODR) Regulations, 2015 provides that the senior management mean the officers/personnel of the listed entity who are members of its core management team excluding board of directors and normally comprise all members of management one level below the executive directors, including all functional heads.

As per the revised definition w.e.f. 1st April, 2019, the senior management will also include chief executive officer/managing director/whole time director/manager (including chief executive officer/manager, in case they are not part of the board) and specifically include company secretary and chief financial officer.

- **Company Secretary as Corporate Manager**

The Company Secretary in a role of corporate manager have an in-depth knowledge and understanding of the company and its history and also develops relationships with the board and management, the services of company secretary as corporate manager is available at all times to discuss issues in depth and provide immediate response to queries. In a small company a wide role in the organisation can be played by a company secretary and is able to take on other responsibilities likewise Finance Manager, Legal officer, HR Manager etc. Further, the Company Secretary also assisting the chairman in preparing for meetings and truly act as the “conscience of the company” and with no Conflict of Interest and reliable to deal with the confidential documents of the company.

- **Company Secretary to act as authorized representative of a company and or its Board**

The Company Secretary of a company can appear before the following authorities as a authorized representative of the company and its board:

- National Company Law Tribunal
- Competition Commission of India
- Securities Appellate Tribunal
- Registrar of Companies
- Consumer Forums
- Telecom Disputes Settlement and Appellate Tribunal
- Tax Authorities
- Other quasi-judicial bodies and Tribunals

COMPANY SECRETARY IN PRACTICE

- **Company Secretary as Secretarial Auditor**

Section 204 of the Companies Act, 2013 the following classes of companies are required to obtain Secretarial Audit Report from Company Secretary in practice and shall annex the same with its Board's report made in terms of sub-section (3) of section 134,:

- (a) Every listed company;
- (b) Every public company having a paid-up share capital of 50 crore rupees or more; or;
- (c) Every public company having a turnover of 250 crore rupees or more.

Further, every listed entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit and shall annex with its Annual Report, a Secretarial Audit Report, given by a Company Secretary in

Practice, in such form as may be specified with effect from the year ended March 31, 2019.

The Board of the company is required to explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in his report.

● **Company Secretary as an Expert**

Section 2(38) of the Companies Act, 2013 include the company secretaries as an expert and the definition of the expert under Companies Act, 2013 is as under:

“Expert” includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law.

● **Company Secretary as Registered Valuer**

A Company Secretary in practice is recognized to be registered valuer for the asset class “Securities or Financial Assets” under the Companies (Registered Valuer and Valuation) Rules, 2017

Where valuation is required to be made in respect of any stocks, shares, debentures, securities, etc. of a company under the provisions of Companies Act, 2013, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as prescribed under Section 247 of the Companies Act, 2013 read with Companies (Registered Valuers and Valuation) Rules, 2017.

To act as an Registered valuer in the Securities or Financial Assets the person should be the Member of the Institute of Chartered Accountants or The Institute of Cost Accountants of India or the Institute of Company Secretaries of India; or MBA / PGDBM specialization in finance or; Post Graduate Degree in Finance and should have at least three years of experience in the discipline. Further, the person need to complete and pass the Valuation Specific Education Course as per syllabus specified under rule 5 of the Companies (Registered Valuers and Valuation) Rules, 2017.

Further, A person is eligible to be a registered valuer if he/she-

- a. is a valuer member of a registered valuers organisation;
- b. is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;
- c. has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;
- d. possesses the qualifications and experience as specified in rule 4;
- e. is not a minor;
- f. has not been declared to be of unsound mind;
- g. is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;
- h. is a person resident in India;
- i. has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

- j. has not been levied a penalty under section 271j of income-tax act, 1961 (43 of 1961) and time limit for filing appeal before commissioner of income-tax (appeals) or income-tax appellate tribunal, as the case may be has expired, or such penalty has been confirmed by income-tax appellate tribunal, and

five years have not elapsed after levy of such penalty; and

- k. is a fit and proper person:

Explanation: - For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

- i. Integrity, reputation and character,
- ii. Absence of convictions and restraint orders, and
- iii. Competence and financial solvency.

● **Company Secretary as Insolvency Professional**

Company Secretaries having passed necessary examination, possessing prescribed number of years of experience, enrolled with an insolvency professional agency and registered with Insolvency and Bankruptcy Board of India (IBBI) as an insolvency professional, can take up matters relating to corporate insolvency resolution process as interim resolution/Resolution Professionals, as well as also take up voluntary liquidation cases. They can also act as authorized representatives for a class of creditors in a meeting of Committee of Creditors in a resolution process.

As per Regulation 5 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2018, an individual shall be eligible for registration, if he -

- (a) has passed the Limited Insolvency Examination within twelve months before the date of his application for enrolment with the insolvency professional agency;
- (b) has completed a pre-registration educational course, as may be required by the Board, from an insolvency professional agency after his enrolment as a professional member; and
- (c) has
 - (i) successfully completed the National Insolvency Programme, as may be approved by the Board;
 - (ii) successfully completed the Graduate Insolvency Programme, as may approved by the Board;
 - (iii) fifteen years' of experience in management, after receiving a Bachelor's degree from a university established or recognised by law; or
 - (iv) ten years' of experience as – (a) chartered accountant registered as a member of the Institute of Chartered Accountants of India, (b) company secretary registered as a member of the Institute of Company Secretaries of India, (c) cost accountant registered as a member of the Institute of Cost Accountants of India, or (d) advocate enrolled with the Bar Council.

● **Company Secretary as Internal Auditor**

Section 138 of Companies Act, 2013 read with Rule 13 of the Companies (Accounts) Rules, 2014 provides that the following class of companies are required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:-

- (a) every listed company;
- (b) every unlisted public company having-
 - (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or
 - (ii) turnover of two hundred crore rupees or more during the preceding financial year; or
 - (iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred

crore rupees or more at any point of time during the preceding financial year; or

- (iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
- (c) every private company having-
 - (i) turnover of two hundred crore rupees or more during the preceding financial year; or
 - (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year:

Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, to conduct internal audit of the functions and activities of the company.

Further, under the various securities laws, company secretary in practice is authorized to undertake internal audit of:

- Portfolio Managers
- Stock Brokers/Clearing Members/ Trading Members
- Credit Rating Agencies
- Registrar and Share Transfer Agents (RTAs)
- Internal Audit & Concurrent Audit of Depository Participants
- Yearly Audit of Investment Advisors
- Annual Compliance Audit of Research Analyst
- Reconciliation of Share Capital Audit.
- Company Secretary as GST Professional

Company Secretaries can play an important role in being an advisor and facilitator for due compliances under GST and be an asset to the general business community and corporate world. With their expertise in interpreting laws and skills to tackle and manage regulatory compliances under GST, Company Secretaries render value added services to the trade and industry while acting as extended arms of regulatory mechanism. A person having passed CS final examination is eligible for enrolment as GST Practitioner. Company Secretaries can provide guidance and advisory services to business entities to interpret GST laws and assist in effectively discharging various compliances under GST while undertaking activities like tax planning, maintenance of GST records, drafting legal documents like replying to show cause notices, impact analysis, etc.

Though, the Company Secretaries cannot perform Audit in matters related to GST. But he can provide the following services:

- (i) **Advisory services or strategic advisor:** A Company Secretary can comprehensively interpret the law of GST and provide complete guidance and advisory to the business entities. Company Secretaries are more suited for their services because of their knowledge of laws and good communication skills.
- (ii) **Tax Planning:** Company Secretaries are competent to understand the impact of laws and its various alternatives and can be helpful in proper tax planning under GST.
- (iii) **Procedural Compliances:** Procedural Compliance includes registration, filing of returns, payments of taxes, assessment etc. Since a Company Secretary is already playing the role of a Compliance Officer under various other laws, he can assist in the same under GST law also.
- (iv) **Book/Record Keeping:** Like any other tax laws, introduction of GST would also require proper record keeping and maintaining systematic records of credit of input/service and its proper utilisation etc.

- (v) **Representation:** A Company Secretary can provide the service of representation with confidence because of practical exposure due to appearing before various competent authorities.
- (vi) **Appellate work:** Because of their legal bent of mind, a Company Secretary can provide better services in the field of appellate work.

● **Company Secretary in Certification Services**

Rule 8 (12) of the Companies (Registration office and fees) Rules, 2014 provides that the following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice, namely:- INC-21, INC-22, INC-28, PAS-3, SH-7, CHG-1, CHG-4, CHG-9, MGT- 14, DIR-6, DIR-12, MR-1, MR-2, MSC-1, MSC-3, MSC-4, GNL-3, ADT-1, NDH-1, NDH-2, NDH-3;

The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified in the following manner, namely:—

- (i) GNL-1 - optional pre-certification by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice;
- (ii) DPT-3 – certification by Auditors of the company;
- (iii) MGT-10-certification by a Company Secretary in whole-time practice;
- (iv) AOC-4 certification by the Chartered Accountant or the Company Secretary or as the case may be by the Cost Accountant, in whole-time practice.

E-form DIR-3 shall be filed along with attestation of photograph, identity proof and proof of residence of the applicant by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice.

E from DIR-3 KYC: every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year is required to submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year which is also required certification.

Further, the company secretaries are also provide the following certification services under various other regulations:

- Certification to the effect that all transfers have been completed within the stipulated time
- Half-yearly certificate regarding maintenance of 100% security cover in respect of listed non-convertible debt securities
- Certificate regarding compliance of conditions of corporate governance
- Certification in case of offer/allotment of securities to more than 49 and up to 200 investors
- Certificate that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by the Board/ Ministry of Corporate Affairs or any such statutory authority.

● **Company Secretary in Representation services**

Company Secretaries have been authorized to represent before:

- Registrar of Companies and Regional Directors
- National Company Law Tribunal and National Company Law Appellate Tribunal
- Competition Commission of India

- Securities Appellate Tribunal
- Telecom Disputes Settlement and Appellate Tribunal
- Authorities under Real Estate (Regulation & Development) Act, 2016
- Consumer Forums
- Telecom Disputes Settlement and Appellate Tribunal
- Tax Authorities, and Other Quasi-judicial bodies and Tribunals.

● **Company Secretary as IPR Expert**

The Company Secretaries can act as registered Trade Marks Agent and also advise their client on matters related to:

- IPRs under TRIPs Agreement of WTO
- Anti-dumping, subsidies and countervailing duties
- Foreign Trade Policy and Procedures (also issuing certificates thereunder)
- Intellectual Property licensing and drafting of Agreements

● **Company Secretary as Expert beyond Company Law**

Corporate Laws Advisory Services extend beyond the boundaries of Companies Act into the following laws and activities:

- SEBI Act,
- Securities Contracts (Regulation) Act and Rules and Regulations made thereunder
- Depositories Act
- Foreign Exchange Management Act
- Environmental and Pollution Control Laws
- Labour and Industrial Laws
- Co-operative Societies Act
- Competition Policy and Laws pertaining to Anti Competitive Practices
- Intellectual Property Rights – Protection, Management, Valuation and Audit
- Drafting of Legal Documents

● **Company Secretary as Other Services Provider**

Appointments on the basis of expert knowledge:

- Scrutinizer for e-voting process in a fair and transparent manner
- Company Liquidator/ Provisional Liquidator
- Technical Member of National Company Law Tribunal
- Part of Expert Panels of various Government, Judicial and Quasi-Judicial Bodies

Under other laws:

Issue of shares and other securities:

- Advisor/consultant in issue of shares and other securities

- Drafting of prospectus/offer for sale/letter of offer/ other documents related to issue of securities and obtaining various approvals
- Listing/delisting of securities with recognized stock exchange
- Private placement of shares and other securities
- Buy-back of shares
- Raising of funds from international markets ADR/ GDR/FCCBs/FCEBs/ ECB
- Due diligence.

Banking Services:

- Diligence Report and Certification in respect of Consortium/Multiple banking arrangement made by Scheduled Commercial Banks/Urban Co-operative Banks
- Loan Syndication and Documentation, registration of charges, status and search reports.

Corporate Restructuring and Compliances:

- Foreign Collaborations and Joint Ventures
- Setting-up Joint Ventures/Wholly owned subsidiaries abroad
- Ensuring compliance of the Takeover Regulations and other applicable laws
- Acting as Compliance Officer and ensuring compliance with Prohibition of Insider Trading Regulations.

Finance, Accounting and Taxation Services:

- Determination of appropriate capital structure
- Analysis of capital investment proposals
- Budgetary controls
- Preparation of Project Reports and Feasibility Studies.
- Advisory services on tax management and tax planning under Income-Tax, GST and other taxation laws
- Preparing/reviewing various Returns and Reports required for compliance with the tax laws and regulations.

Arbitration and Conciliation Services:

- Advising in commercial disputes between parties
- Acting as Arbitrator/Conciliator in domestic and international commercial disputes
- Drafting Arbitration/Conciliation Agreement/Clauses.

OVERVIEW OF VARIOUS INDUSTRY

As part of a strategy to boost the services sector, the central government has identified 12 Champion Services Sectors for promoting their development, and realising their potential. These include Information Technology & Information Technology enabled Services (IT &ITeS), Tourism and Hospitality Services, Medical Value Travel, Transport and Logistics Services, Accounting and Finance Services, Audio Visual Services, Legal Services, Communication Services, Construction and Related Engineering Services, Environmental Services, Financial Services and Education Services.

However, the India Brand Equity Foundation (IBEF), a Trust established by the Department of Commerce,

Ministry of Commerce and Industry, Government of India having objective to promote and create international awareness of the Made in India label in markets overseas and to facilitate dissemination of knowledge of Indian products and services. the Industries on which the IBEF focus include the Agriculture And Allied Industries, Auto Components, Automobiles, Aviation, Banking, Cement, Consumer Durables, Ecommerce, Education And Training, Engineering And Capital Goods, Financial Services, FMCG, Gems And Jewellery, Health care Infrastructure, Insurance, IT & ITeS, Manufacturing, Media And Entertainment, Metals And Mining, Oil And Gas, Pharmaceuticals, Ports, Power, Railways, Real Estate, Renewable Energy, Retail, Roads, Science And Technology, Services, Steel, Telecommunications, Textiles, Tourism And Hospitality. The Overview of the some of the Industries have been detailed under, however the student should also refer the various other sources to get the updated overviews of such industry updates.

(1) Banking Industry

The Indian banking system consists of 27 public sector banks, 21 private sector banks, 49 foreign banks, 56 regional rural banks, 1,562 urban cooperative banks and 94,384 rural cooperative banks, in addition to cooperative credit institutions. Indian banks are increasingly focusing on adopting integrated approach to risk management. Banks have already embraced the international banking supervision accord of Basel II, and majority of the banks already meet capital requirements of Basel III, which has a deadline of March 31, 2019. Rising incomes are expected to enhance the need for banking services in rural areas and therefore drive the growth of the sector. The digital payments revolution has trigger massive changes in the way credit is disbursed in India.

Enhanced spending on infrastructure, speedy implementation of projects and continuation of reforms are expected to provide further impetus to growth. All these factors showing that India's banking sector is also poised for robust growth as the rapidly growing business would turn to banks for their credit needs.

Also, the advancements in technology have brought the mobile and internet banking services to the fore. The banking sector is laying greater emphasis on providing improved services to their clients and also upgrading their technology infrastructure, in order to enhance the customer's overall experience as well as give banks a competitive edge.

In India, there are various types of banks and they were set up under different Acts passed by the Central and State Governments, the various types constitution under the Banking industries includes:

- Listed Private Sector Banks incorporated as Companies
- Listed Public Sector Banks constituted under Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and 1980.
- Unlisted Public Sector Banks
- Cooperative banks

The Banking Companies are regulated by the following Laws:

- Companies Act, 2013
- Banking Companies (Acquisition and Transfer of Undertaking Act, 1970 and 1980 and Regulations made thereunder
- Insolvency and Bankruptcy Code, 2016
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- The Recovery of Debts Due to Banks and Financial Institutions Act, 1993

- Banking Regulation Act, 1949
- State wise Registrars of Cooperative Societies and laws made there under
- Circulars issued by RBI
- Consumer Protection Act.
- Payment and Settlement Systems Act, 2007
- The Bankers' Books Evidence Act, 1891
- Credit Information Companies (Regulation) Act, 2005
- Prevention of Money Laundering Act, 2002
- The Deposit Insurance and Credit Guarantee Corporation Act, 1961
- Industrial Disputes (Banking and Insurance Companies) Act, 1949
- Information Technology Act, 2000

The banking Concerned Tribunals are

- RBI
- Debt Recovery Tribunal
- NCLT and NCLAT
- Banking Ombudsman
- The Banking Codes and Standards Board of India

International Banking: Foreign Exchange Management Act 1999

To conserve foreign exchange and to it to facilitate external trade and payments and also to misuse develop foreign exchange markets in India violation of FERA was a criminal offence violation of FEMA is a civil offence. Some of the Offences under FERA which were not compoundable are compoundable offences under FEMA. While many restrictions were part of FERA in respect almost all current account transactions are free except of transfer of funds a few FERA was draconian criminal law FEMA is a civil law.

2. Tourism and Hospitality

India fares much better as a business destination due to its economic growth. It still remains a highly price-competitive destination. The recent changes in its visa regime with the introduction of visa on arrival can give a great boost to the international arrivals. This sector has emerged as one of the key drivers of growth in India. The tourism industry in India is an important employment generator and an important source of earning foreign exchange for the country. It has a huge growth potential. India has great potential to benefit from the reforms and infrastructural growth initiatives undertaken by the new government. The major concerned areas as health and hygiene, security and safety of tourists should be given more emphasis in the coming years. India is projected to be number one for the growth in the wellness tourism sector in the next five years. There are large areas which need to be tapped from the tourists, point of view. The growth and development of the tourism industry should be made more and more environmental friendly. According to the World Travel and Tourism Council (WTTC), Indian tourism will be one of the most rapidly growing industries in the world.

Industry Highlights

- USD 21.07 billion in Foreign Exchange Earnings (FEEs) through tourism during 2015 (4.1% Growth Rate over 2014)

- 1290.12 million Domestic Tourist Visits during 2014
- India is host to 35 world heritage sites, 10 bio-geographical zones and 26 biotic provinces.
- India was host to 8.03 million Foreign Tourist Arrivals (FTAs) during 2015
- India has 21 Central institutes of hotel management
- In India, 78 jobs are created with every USD 1 million invested in the sector

Specific Laws Applicable to Travel & Tourism Industry:

The laws applicable to the tourism industry can broadly be classified in to the following categories:

1. **Legal and Regulatory Framework in Travel and Tourism:** Relating to consumer protection; health; safety and security of travel and tourism customers. Legal Liability and Risk Management: Legal liability concepts; owner and director liability; guide and leader liability; risk assessment and controlling; risk mitigation; risk financing and insurance.
2. **Transport Legislation:** Surface; sea and air transport laws in relation to carriage of passengers.
3. **Contract legislation in relation to Travel and Tourism customers:** Contract Act & Partnership Act; Sale of goods Act, Consumer Protection Act & Companies Act:
4. **Business Ethics in Travel and Tourism Sector:** CSR policy for travel and tourism businesses; corporate responsibility to shareholders versus stakeholders; personal versus social responsibility; stakeholder theory; determinants of social Responsibility of individuals and social groups; role of governance system. Emergence of corporate governance code; development of corporate governance code; development of Indian corporate governance.
5. **Forex Management: Regulation and Management of foreign exchange:** FEMA - realization and repatriation of foreign exchange; Foreign Exchange Rules in India.
6. **Medical Tourism:** Certification and Accreditation in Health and Medical Tourism, Ethical, Legal, Economic and Environmental issues in Health and Medical Tourism. Role of the National Accreditation Board for Hospitals & Healthcare (NABH) and Joint Commission International (JCI).
7. **Event Laws & Permissions:**
Permissions required for holding an event, general details, police permissions, traffic police, ambulance, fire brigade, municipal corporation, Indian Performing Rights Society(IPRS), Phonographic Performing License, Entertainment Tax, Permissions for open ground events, license for serving liquor.
8. **Law relating to Management of Tourism in Tribal Areas**
9. **Laws relating to Setting up Travel Agency & Tour Operation Unit**

3. Telecommunication

The Indian telecom sector is expected to generate four million direct and indirect jobs over the next five years according to estimates by Randstad India. The employment opportunities are expected to be created due to combination of government's efforts to increase penetration in rural areas and the rapid increase in smartphone sales and rising internet usage.

The mobile industry is expected to create a total economic value of Rs 14 trillion (US\$ 217.37 billion) by the year 2020. It would generate around 3 million direct job opportunities and 2 million indirect jobs during this period@. India's smart phone market grew 14 per cent year-on-year to a total of 124 million shipments in 2017.

Rise in mobile-phone penetration and decline in data costs will add 500 million new internet users in India over

the next five years, creating opportunities for new businesses. The monthly data usage per smartphone in India is expected to increase from 3.9 GB in 2017 to 18 GB by 2023.

4. Cement

The housing and real estate sector is the biggest demand driver of cement, accounting for about 65 per cent of the total consumption in India. The other major consumers of cement include public infrastructure at 20 per cent and industrial development at 15 per cent.

India's total cement production capacity is nearly 455 million tonnes, as of 2017-18. Cement consumption is expected to grow by 4.5 per cent in FY19 supported by pick-up in the housing segment and higher infrastructure spending. The industry is currently producing 280 MT for meetings its domestic demand and 5 MT for exports requirement.

The Indian cement industry is dominated by a few companies. The top 20 cement companies account for almost 70 per cent of the total cement production of the country. A total of 210 large cement plants account for a cumulative installed capacity of over 350 million tonnes, with 350 small plants accounting for the rest. Of these 210 large cement plants, 77 are located in the states of Andhra Pradesh, Rajasthan and Tamil Nadu.

Specific Laws applicable to the cement sector includes:

- Cement Control Order, 1967
- Cement Cess Rule, 1993
- Cement (Quality Control) Order 1995
- Cement (Quality Control) Order 2003
- Bureau of Indian Standards Rules, 1987
- Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
- Mines and Minerals (Development and Regulation) Act, 1957
- Mineral Conservation and Development Rules, 1988
- Metalliferous Mine Regulations, 2012.

5. Gems and Jewellery Industry

India is deemed to be the hub of the global jewellery market because of its low costs and availability of high-skilled labour. India is the world's largest cutting and polishing centre for diamonds, with the cutting and polishing industry being well supported by government policies. Moreover, India exports 75 per cent of the world's polished diamonds, as per statistics from the Gems and Jewellery Export promotion Council (GJEPC). India's Gems and Jewellery sector has been contributing in a big way to the country's foreign exchange earnings (FEEs). The Government of India has viewed the sector as a thrust area for export promotion. The Indian government presently allows 100 per cent Foreign Direct Investment (FDI) in the sector through the automatic route.

Gold demand in India rose to 737.5 tonnes between 2017. India's gems and jewellery exports stood at US\$ 32.71 billion in FY2018. During the same period, exports of cut and polished diamonds stood at US\$ 23.73 billion, thereby contributing about 72.55 per cent of the total gems and jewellery exports in value terms. Exports of gold coins and medallions stood at US\$ 1,917.09 million and silver jewellery export stood at US\$ 3,385.65 million during FY2018.

The gems and jewellery market in India is home to more than 300,000 players, with the majority being small players. Its market size is about US\$ 75 billion as of 2017 and is expected to reach US\$ 100 billion by 2025. It contributes 29 per cent to the global jewellery consumption.

India is one of the largest exporters of gems and jewellery and the industry is considered to play a vital role in the Indian economy as it contributes a major chunk to the total foreign reserves of the country. UAE, US, Russia, Singapore, Hong Kong, Latin America and China are the biggest importers of Indian jewellery. The Goods and Services Tax (GST) and monsoon will steer India's gold demand going forward.

6. Automobile

- The Automobile Industry contributes around 7.1% to India's GDP by volume.
- India poised to be the third largest automotive market in the world by 2020.
- India is also the fourth largest producer in the world with an annual production of 25 million vehicles in 2016-17 and is the largest manufacturer of two-wheelers, three-wheelers and tractors in the world.
- India is home to four large auto manufacturing hubs: Delhi-Gurgaon-Faridabad in the north, Mumbai-Pune-Nashik-Aurangabad in the west, Chennai-Bengaluru-Hosur in the south and Jamshedpur-Kolkata in the east.
- Six million-plus hybrid and electric vehicles to be sold annually, by 2020.
- FDI received by the sector between April 2000 and December 2017- USD 18.43 Billion.

Specific Laws applicable to the automobile sector includes

- Motor Vehicles Act 1988
- The Central Motor Vehicle Rules, 1989
- Respective State Automobile Laws

7. Automobile Components

- Size of the Indian Auto Component Industry is around USD 43.5 billion (2016-17) and contributes 2.3% to India's Gross Domestic Product (GDP).
- Auto Component Industry registered a Compound Annual Growth Rate (CAGR) of 7% over 2011-12 to 2016-17.
- Indian auto component industry is expected to register a turnover of USD 115 billion by 2020-21 and USD 200 billion by 2026.
- In the last financial year, the auto component exports contributed 4% to India's overall exports.
- Exports increased to USD 10.90 billion in 2016-17.
- Domestic Aftermarket in 2016-17: USD 8.4 billion.
- The industry is projected to be the third largest in the world by 2025.

Specific Laws applicable to the automobile Component sector includes

- The Motor Vehicles Rules, 1989 (Amendment in the year 2005) for Auto Components Industry
- Safety standards by Automotive Industry Standard Committee & Bureau of Indian Standards etc.

8. Aviation

- India is the world's fastest growing domestic aviation market, and has posted the fastest full year growth rate for three years in a row now.
- India's Revenue Passenger Kilometer (RPK) growth of 17.5% was higher than the global average growth of 7% in 2017.

162 PP-SACM&DD

- At USD 16 billion, India's aviation market is currently the 9th largest in the world and is projected to be the 3rd largest by 2020, and largest by 2030.
- More than 80 international airlines connecting to over 40 countries.

Specific Laws applicable to the Aviation sector includes

- Aircraft Act, 1934
- Aircraft Rules, 1937
- Aircraft Public Health Rules, 1954
- Unlawful Seizure Against Safety of Civil Aviation ,1982
- Anti-hijacking Act, 1982
- Anti-hijacking (Amendment) Act, 1994
- Air corporations (transfer of undertakings and Repeal) Act, 1994
- The Suppression of unlawful acts against safety of civil aviation Act, 1982
- The Suppression of unlawful acts against safety of civil aviation Rules, 1994
- Aircraft security Rules,2011
- Tokyo convention Act, 1975
- The Aircraft (Carriage of Dangerous Goods) Rules, 2003
- The Air Corporations Act, 1953
- The Airports Authority of India Act, 1994
- The Airports Authority of India (Amendment) Act, 2003
- The Carriage by Air Act (Amended), 2009

9. Biotechnology

- India is among the top 12 biotech destinations in the world and ranks third in the Asia Pacific.
- India has the second highest number of United States Food & Drug Administration (USFDA) approved plants.
- No.1 producer of Hepatitis B vaccine recombinant.
- Indian biotech industry shall touch USD 100 billion by 2025.
- Large consumer base with increasing disposable income.

Specific Laws applicable to the Biotechnology sector includes

- Rules for the manufacture, Use/Import/Export and storage of hazardous micro organisms/ Genetically engineered organisms or cell, 1989
- Revised recombinant DNA safety guidelines
- Guidelines for research in transgenic plants and guidelines for toxicity and allergen city evaluation of transgenic seeds, plants and plant parts, 1998
- The plants, Fruits and Seeds (Regulation of import in India) Order 1989 issued under the destructive Insects and Pests Act, 1914

- Guidelines for generating Preclinical and Clinical data for DNA Therapeutics, 1999
- National Seed policy 2002
- Seeds Act, 1966
- EXIM Policy Pertaining to Biotechnology
- Environment Protection Act, 1986 pertaining to Biotechnology
- Foreign Exchange Management Act, 1999 pertaining to Biotechnology
- Protection of Plant Varieties and Farmers' Rights Act, 2001.

10. Chemicals

- Sixth largest producer of chemicals worldwide and third largest producer in Asia. (by output) .
- The size of Indian chemicals sector for the year 2015-16 was USD 142 billion.
- During 2016-17, production of total major chemicals and basic petrochemicals stood at 25739 thousand MT, while that of major chemicals was 10234 thousand MT.
- Total export of Chemicals and Chemical Products in 2016-17-USD 29 billion.
- Chemicals sector also acts as a key enabling industry and provides support for variety of other sectors like agriculture, construction, leather etc

Specific Laws applicable to the Biotechnology sector includes the Manufacture, Storage, Import of Hazardous Chemicals Rules, 1989

11. Construction

- USD 650 Billion investments in urban infrastructure estimated over next 20 years.
- 100% Foreign Direct Investment (FDI) permitted through the automatic route for townships, cities.
- Dedicated Fund for Affordable Housing under National Housing Bank.
- Identification of 99 Smart Cities, having an outlay of USD 31.38 billion.

Specific Laws applicable to the Construction sector includes

- Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Central Rules, 1998
- The Building and Other Construction Workers' Welfare Cess Act, 1996
- Building and Other Construction Workers Welfare Cess Rules, 1998
- State Construction Laws

12. Defence Manufacturing

- India has the third largest armed forces in the world.
- The allocation of Defence in the India's union budget is approx USD 34.53 billion and 31.1% of the defence budget is spent on capital acquisitions.
- 60% of defence related requirements are met by imports which offers a huge opportunity for import substitution.

13. Electrical Machinery

- In 2016-17, the size of Indian Electrical Equipment Industry exceeded USD 25 billion.
- The sector contributes about 8% to manufacturing sector in terms of value, and 1.5% to the overall GDP.
- Estimated market value is expected to reach USD 100 billion by 2022.
- To provide employment, both directly and indirectly to 3.5 million people by 2022.

14. Electronic Systems

- The electronics market of India is one of the largest in the world and is anticipated to reach USD 400 billion by 2020.
- India ranks third among global startup ecosystems.
- Several government driven initiatives and incentives like – Electronics Development Fund (EDF), Electronics Manufacturing Clusters (EMCs) scheme, Modified Special Incentive Package Scheme (M-SIPS).
- 100% FDI is allowed through automatic route (49% through automatic route in strategic defence electronics sector).

15. Food Processing

- 200.9 million hectares of the Gross Cropped Area in 2013-14.
- 141.4 million hectares of Net Sown Area.
- 127 agro-climactic zones
- 9 Mega Food parks operationalized, 42 got sanctioned.
- Nivesh Bandhu, an investor one-stop platform.

Specific Laws applicable to the food processing sector includes:

- Essential Commodities Act, 1955 (In Relation To Food)
- Export Quality Control and Inspection Act, 1963
- National Food Security Act, 2013
- Food Safety & Standard Act, 2006
- Food Safety and Standards Rules, 2011
- Food Safety and Standards (Packaging and Labelling) Regulations, 2011
- Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011
- Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations 2011
- Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011
- Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011
- The Meat Food Products Order, 1973
- Meat and Meat Product Order, 1992 (Mmpo)
- Indian Fisheries Act 1897 and Amendments

- The Fruit Products Order, 1955
- Fruit Products (1st Amendment) Order, 2006
- Vegetables Product Order, 1967 (Vpo)
- The Vegetable Oil Products (Control) Order, 1947
- The Edible Oils Packaging (Regulation) Order, 1998
- The Solvent Extracted Oil, De Oiled Meal, And Edible Flour (Control) Order, 1967
- The Milk And Milk Products Order, 1992
- Respective State Food Laws

16. IT & BPM

- IT-BPM sector accounts for largest share in total Indian services export (45%).
- IT-BPM sector accounts for 56% of the total global outsourcing market.
- 640 offshore development centers in more than 80 countries.
- Indian IT & BPM industry is expected to grow to USD 300 billion by 2020.
- IT - BPM sector constitutes ~ 9.3% of India's GDP.
- IT-BPM is the largest private sector employer - delivering 3.7 million jobs.

Specific Laws applicable to the Information Technology sector includes:

- The Patents Act, 1970 & Patent Rules, 2003
- Trade Marks Act, 1999
- Trade Marks Rules, 2001
- Information Technology Act 2000; Information Technology (Amendment) Act 2008 & Rules for the Information Technology Act 2000
- Designs Act, 2000
- Designs Rules, 2001

17. Leather

- Indian leather sector stands at USD 17.85 billion (Exports – USD 5.85 billion, Domestic Market – USD 12 billion).
- India accounts for 12.93% of the world's leather production of hides/skins.
- High Growth projected in the next five years.
- Indian leather industry has one of the youngest work force with 55% of workforce below 35 years of age.
- India is the second largest producer of footwear and leather garments in the world.

18. Media And Entertainment

- INR 204 Billion film industry by 2019.
- INR 1,026 Billion in 2014 revenues.

- Second largest TV market in the world.
- 168 Million television households in 2014.
- INR 45 Million animation industry.
- 800 TV channels.

Specific Laws applicable to the Media and Entertainment sector includes:

- The Press And Registration of Books Act, 1867
- The Registration of Newspaper (Central) Rules, 1956
- Working Journalists and Other Newspaper Employees (Condition of Service) And Miscellaneous Provisions Act, 1955
- The Working Journalists (Conditions of Service) And Miscellaneous Provisions Rules, 1957
- The Working Journalists (Fixation of Rates Of Wages) Act, 1958
- The Newspaper (Price and Page) Act, 1956
- The Delivery Of Books 'And Newspapers' (Public Libraries) Act, 1954
- The Delivery Of Books (Public Libraries) Rules, 1955.
- Press Council Act, 1978
- Sports Broadcasting Signals (Mandatory Sharing with PrasarBharti), 2007
- Press (Objectionable Matters) Act, 1951
- Copyright Act, 1957
- Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
- Cine Workers Welfare Cess Act, 1981
- Cine Workers Welfare Fund Act 1981
- The Drugs And Magic Remedies (Objectionable Advertisements) Act, 1954
- The Drugs And Magic Remedies (Objectionable Advertisements) Rules, 1955
- The Young Persons (Harmful Publications) Act, 1956
- The Dramatic Performances Act, 1876 (Relevant Provisions)
- The Cinematograph Act, 1952
- The Cinematograph (Certification) Rules, 1983
- Drug and Cosmetics Act, 1940
- Drugs (Price Control) Order, 1995
- The Indecent Representation of Women (Prohibition) Act, 1986
- Indecent Representation of Women (Prohibition) Rules, 1987
- The Prasar Bharati (Broadcasting Corporation of India) Act, 1990
- Cable Television Network Regulation Act 1995
- Cable Television Network Regulation Rule 1994

19. Mining

- Mining sector is one of the core sectors of economy. It provides basic raw materials to many important industries.
- Mining sector (including fuel, atomic, major and minor minerals) contributed about 2.4% of GDP in 2014-15 as per the data released by Central Statistical Organization under Ministry of Statistics & Programme implementation.
- India is a mineral rich country and has favourable geological milieu which is yet to be fully explored, assessed and exploited. Its geological setup is similar in many ways to that of resource rich countries like Canada, Australia, Brazil, South Africa, Chile and Mexico etc. Exploration activities in India are mostly carried out by Geological Survey of India (GSI), Mining Exploration Corporation Limited (MECL), various State Directorates of Geological Mining (DGMs), public sector undertakings (PSU) and private sector entities both domestic and subsidiaries of many global companies.
- India total land area 3.2875 million sq. km out of which, GSI has identified 0.571 million sq. km. as Obvious Geological Potential (OGP) area for minerals.

Obvious Geological Potential (OGP) Area	
Mineral	Area (sq. km.)
Gold	1,02,809
Diamond and Precious Stones	3,00,000
Base Metals	1,81,150
Platinum Group of Elements	8,130
Iron ore	5,135
Manganese ore	4,600
Chromite	2,690
Manganese	6,000
Tin and Tungsten	1,300
Bauxite	32,520

- The Mines & Minerals (Development & Regulation Act), which governs the mineral sector, has been amended recently, by the Government. The amendment removed discretion by instituting auction to be sole method of grant of major mineral concessions and, thereby bringing in greater transparency. It also provided the much-needed impetus to the mining sector by deemed extension of mining leases.
- India has a liberalized FDI up to 100% in mining under automatic route
- Transferability of captive leases, allowed by recent amendment in MMDR Act in 2016.

Specific Laws applicable to the Mining sector includes:

- The Mines Act, 1952
- The Mines Rules, 1955
- Coal Mines (Conservation and Safety) Act, 1952

- Coal Mines Regulations, 1957
- The Coal Mines Regulations, 2006
- The Mines and Mineral (Regulation and Development) Act, 1957 & Rules, 1988

20. Oil and Gas

The energy sector consists of Petroleum and Natural Gas, Coal, Renewable Energy sector and power sector in India. There is some or the other inter-linkages between themselves among all these sectors.

Sector Highlights:

- 635 million metric Tonnes (MMT) of proven oil reserves (2P).
- 54 trillion cubic Feet of proven natural gas reserves and 96 trillion cubic Feet of estimated Shale gas reserves.
- Third largest consumer of crude oil and petroleum products in the world and second largest refiner in Asia.
- 60% of the prognosticated reserves of 28,000 MMT are yet to be harnessed
- Regasified Liquefied Natural Gas (RLNG) regasification facility is likely to increase from 47.5 MMTPA* by 2022 from a current level of 22 MMTPA.

*million metric tonnes per annum

Applicable Specific Laws

Any E & P project in India is governed by various acts, rules, and regulations set by Government at the national level and other regulatory agencies at the state and local level. Some of the acts applicable specifically to Oil and Gas sector are:

- Petroleum Act, 1934 (Act no. 30 of 1934) and the rules made there under:
An Act to consolidate and amend the law relating to the import, transport, storage production, refining and blending of petroleum [16th September, 1934] Whereas it is expedient to consolidate and amend the law relating to import, transport, storage, production, refining and blending of petroleum . Therefore, this Act was passed in 1934 to address operational issues covering the entire value chain of oil production.
- The Oilfields (Regulation and Development) Act 1948 (53 of 1948):
Following the Petroleum Act, the next major legislation was the Oilfields (Regulation and Development) Act of 1948. Under this Act, the central government was granted the power to make rules for regulating the authorization of mining leases (for off shore blocks). Further, the Act also empowers the central government to determine rates of royalty payable by the holder of the mining lease for on shore as well as the offshore blocks.
- The Petroleum pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962):
With regard to acquisition of user rights on a land where petroleum and/or mineral pipelines were to be laid, the Petroleum and Minerals Pipeline Act got passed in 1962. This Act has provisions relating to the acquisition and utilization of land for laying pipelines. The Central Government has been given the authority to acquire the land. Once the land has been acquired, the Central Government has the option of either keeping the acquired land or transferring it to either the state government or the corporation for which the land has been acquired. The Act also provides for compensation in case of any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to

be, or is being, or has been laid. Further, the liability of paying the compensation lies with the concerned authority, i.e., the Central or State Governments or Corporation.

- The Oil Industry (Development) Act, 1974 (47 of 1974) and Rules 1975:

The Oil Industry (Development) Act was passed in 1974 under which the Oil Industry Development Board (OIDB) was created at a time when the need to promote self-reliance in the oil and gas sector was realized. The mandate of the Board is to facilitate development of the sector. The Board is responsible for collecting the oil industry development cess on the blocks that have been awarded to upstream oil companies on a nomination basis. It also extends financial assistance to companies in the sector in the form of loans.

Other Allied Acts regulating Oil and Gas Sector

- Kerosene (Restriction on use and fixation of price) Order, 1993
- Kerosene (Fixation of Ceiling prices) Order, 1970
- Paraffin Wax (supply, Distribution and Price Fixation) Order, 1972
- Light Diesel Oil (Fixation of Ceiling Price) Order, 1973
- The ESSO (Acquisition of Undertaking in India) Act, 1974 (4 of 1974)
- Furnace Oil (Fixation of Ceiling Price and Distribution) Order, 1974
- The Burmah-Shell (Acquisition of Undertaking in India) Act, 1976 (2 of 1976).
- The Caltex Acquisition of shares of Caltex Oil Refining (India) Limited and of the Undertakings in India Caltex (India) Limited Act, 1977 (17 of 1977).
- Domestic Gas Pvt, Limited and parcel Investment private Limited takeover of Management Act, 1979.
- Kosan Gas Acquisition Act, 1979.
- Lubricating Oils & Greases (Processing, Supply and Distribution) Regulation Order 1987.
- Liquefied Petroleum Gas (Regulation of supply and Distribution) Order, 1993.
- Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990.
- Explosives Act, 1884
- The Mines Act, 1952
- Mines and Minerals (Regulations and Development) Act, 1957
- The territorial Waters, Continental Shelf, Exclusive Economic Zone And Other Maritime Zones Act, 1976
- Offshore Areas Minerals (Development and Regulation) Act, 2002
- Specific policies applicable to oil and gas sector in India.

21. Pharmaceuticals

- At the same time, Indian pharmaceuticals market is expected to touch USD 55 billion by 2020 from USD 36.7 billion in 2016, growing at a compound annual growth rate (CAGR) of 15.92 per cent
- By 2020, India is likely to be among the top three pharmaceutical markets by incremental growth and sixth largest market globally in absolute size

- There are over 10,500 manufacturing units and 3,000 pharma companies in India. Over 60,000 generic brands exist across 60 therapeutic categories
- India accounts for 20% of global exports in generics, making it the largest provider of generic medicines globally. Indian vaccines are exported to 150 countries

Specific Laws applicable to the Pharmaceuticals sector includes

- The Drugs and Cosmetics Act, 1940 & Amendment 2008
- The drugs and cosmetics rules, 1945
- The Pharmacy Act, 1948
- The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954
- Drugs (Magic Remedies) Objectionable Advertisement Rules, 1955
- The Narcotic Drugs and Psychotropic Substances Act, 1985
- Special Permits and Licences Rules, 1952
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1956
- The Drugs (Prices Control) Order 1995 (under the Essential Commodities Act)
- Essential Commodities Act, 1955
- The Clinical Establishments (Registration and Regulation) ACT, 2010
- The Clinical Establishments (Registration and Regulation) Rules, 2010
- Biological Diversity Act 2002
- Biological Diversity Rules, 2004
- Drug Policy 2002
- Plant Quarantine Order
- National Pharmaceutical Policy 2012
- Drugs (Prices Control) Order, 2013
- Rules for the Manufacture, Use, Import, Export and Storage of Hazardous micro-organisms / Genetically engineered organisms or cells.

NATIONAL AND INTERNATIONAL DEVELOPMENTS

A company secretaries are globally recognized as the part of the senior management of the company. However, the company secretaries are typically named a corporate secretary or secretary in the various countries according to the prevailing law in such country.

In any company, the role is not a clerical or limited to the secretarial one in the usual sense. Now the responsibilities of the company secretary have evolved from that of a “note taker” at board meetings or “administrative servant of the Board” to one which encompasses a much broader role of acting as “Board advisor” and having responsibility for the organisation’s corporate governance. The company secretary ensures that an organisation complies with relevant legislation and regulation, and keeps board members informed of their legal responsibilities. Company secretaries are the company’s named representative on legal documents, and it is their responsibility to ensure that the company and its directors operate within the law.

The Board as a whole, particularly the chairman, relies on the company secretary to advise them not only on

Role of the directors' and their statutory duties under the prevailing law, and various disclosure obligations but also in respect of corporate governance requirements and practices and effective board processes. This specialized role of the company secretary has emerged to position them as one of the key managerial personnel within the organization.

It is also their responsibility to register and communicate with shareholders, to ensure that dividends are paid and to maintain company records, such as lists of directors and shareholders, and annual accounts. In many countries, private companies have traditionally been required by law to appoint one person as a company secretary, and this person will also usually be a senior board member.

1. Role as a Guide

Company Secretaries, with their knowledge and expertise, play a lead role in guiding promoters, directors and society at large in adopting good corporate governance practices, beyond the merely legal prescriptions that adds value to the business by enhancing its image among its customers. They provide support in conducting global business and managing global alliances. A company secretary is now:

- an active partner with the directors to ensure Board effectiveness and good governance
- an advisor to the Board to ensure that policy and intent are manifested correctly
- a resource to provide trends and information; and
- the ombudsman for all members of the co-operative community to ensure a commitment to the values that are important for the society.

The main strength of company secretary lies in his/ her legal knowledge especially in the fields of business, corporate and monetary laws. As law has various branches, it is seldom possible for a company to involve large number of professionals at a time. CS is rightly the profession which can provide a single window in legal matters. A company secretary ensures compliance in all internal rules and external laws and regulations applicable to the company. Thus, besides Company law, other laws generally applicable to the companies like Direct Tax, Indirect Tax, GST, Labour laws, FEMA, as well as laws relating to securities & SEBI guidelines (for listed companies) relevant for secretarial compliance report to the Board fall in his ambit. Compliance needs to become part of the company culture, and as a governance professional, CS spearheads this effort.

2. Role as a Regulator

Company secretaries are highly valued and relied upon by regulators for compliances and they are considered as the first level regulators at the corporate level. The dynamics of the boardroom are changing and chairmen and directors are realising that they need specialist skills and technical knowledge in this area and they are looking to company secretaries to provide this expertise in effect, they are considered an extended arm of the regulatory mechanism. They act as the link and interface between industry and regulators. Laws are getting liberal as well as complex and changing very fast. Cs must be updated about regulatory changes and must educate and update management about changes in the applicable laws and their likely impact on the company and the domestic environment as well as economy as a whole. Being corporate governance professionals, regulators depend and rely on company secretaries for implementation of good governance practices. Company secretaries enjoy the confidence of industry as well as regulators for their professional conduct, ethics and values.

3. Role as a Champion of Good Corporate Governance

Due to the separation of ownership and management, society depends largely upon professionals for the healthy growth of corporates and protection of the interests of the society. Also the responsibility for developing and implementing processes to promote and sustain good corporate governance has fallen largely within the

remit of the company secretary. Therefore, Company Secretaries have played a vital role as a bridge between society and business. The profession of Company Secretaries is seen by society as the champion of good corporate governance, in ensuring that corporates:

- run their businesses in accordance with the laws of the land;
- follow ethical and honest practices in business;
- protect and promote the interests of investors who invest their hard earned savings in the capital of the company;
- maintain transparency and provide correct and adequate information and disclosures about their business activities;
- run their business in a sustainable manner; and
- work in the larger interests of society.

The Companies now are setting up specific departments and teams that develop policies, strategies and goals which are for their Corporate Social Responsibility (CSR) programs and allocate separate budgets to support them. These programs are based on well-defined social beliefs or are carefully aligned with the companies' business domain. The programs are put into practice by the employees who are crucial to this process. This means having policies and procedures in place which integrate social, environmental, ethical, human rights or consumer concerns into business operations and core strategy – all in close collaboration with stakeholders. Corporate Social Responsibility under the guidance of Company Secretary moving far ahead from its age old domain of philanthropy and charity, has now reached to a new hallmark of Corporate responsiveness and action to social issues in order to advance further towards a new era of a collective future.

4. Role in Investor Education and Protection

An informed investor is more precious than the investment. Investors provide the much needed capital which, combined with entrepreneurial skills, results in successful corporate. These corporates provide goods and services, taxes, and employment, and fuel economic growth. Therefore, it is very important that investors are educated, enlightened and well informed to be able to take sound investment decisions and to protect their interests. Recognising the importance of shareholder rights and investor protection, the Companies Act, 2013 introduced some important changes to the company law regime in India and has plugged many loopholes. It upholds shareholders democracy and investor protection in many ways. A significant development has been the inclusion pertaining to 'Class Action Suit' (Section 245) to strengthen the concept of shareholders democracy.

The ICSI as a national body, and its members as corporate governance professionals, have played a very significant role in the area of investor education and protection. Under various securities laws such as Securities Contracts (Regulation) Act, 1956, Depositories Act, 1996, regulations and guidelines issued by SEBI under SEBI Act, 1992 and the listing agreement of the stock exchanges for equity, debt listing, IDRs, company secretaries have been recognized to verify compliances and to issue certificates. A better regulated capital market automatically brings development for the country and a strong regulated capital market instils confidence among the investors that their money is safe. The company secretaries are expected to exercise sensitive professional and moral judgments in all their activities, while carrying out their professional responsibilities. They should accept the obligation to act in a way that will serve public interest, honour public trust, and demonstrate commitment to professionalism. The CS is expected to maintain and broaden public confidence and perform all professional responsibilities with the highest sense of integrity.

5. Role as a Global Leader

The changing global business environment has not only brought changes in the role and responsibilities of the company secretaries but has transformed it into new dimensions obliterating almost the concept of their role in a

company performed by them hitherto. The changes have thrown up new challenges and opportunities that have spurred the professional instincts of company secretaries to identify themselves with the totality of business and managerial responsibilities. The position of the company secretary enables them to have a holistic view of the governance framework and as a result they are generally tasked with the responsibility of ensuring that this framework and any supporting policies and procedures are clearly documented. Thus, a company secretary has emerged as a key professional in the corporate management providing solutions to the core management team and harmonise the basic decision making process to bring it in line with key factors of the corporate world.

Global leadership may be referred to as capacity to unify a diverse workforce around a single purposeful vision, through demonstration of personal mastery, thinking globally, anticipating opportunity and using shared leadership networks. A global leader must continuously practice personal mastery and provide organizational leadership through internal/external influence. Thus a company secretary as a global leader thinks globally, anticipates opportunity, creates a shared vision, develops and empowers people, appreciates cultural diversity, builds teamwork and partnerships, embraces change, encourages constructive challenge, ensures customer satisfaction, achieves a competitive advantage, demonstrates personal mastery, shares leadership and lives the values.

6. Role of conscience keeper

Based on historical, socio-religious, political and economic factors, Indian society has its unique problems and characteristics. Poverty, illiteracy, employment, drinking water, sanitation and health, environment, regional imbalances etc., are problems which need to be addressed at all levels. The government is continuously making efforts to improve the situation and the corporate sector, as it has the requisite size, resources and reach, has the social responsibility to augment and support the efforts of the government. The profession of company secretary plays the role of conscience keeper and torch bearer in educating and motivating corporates to play their role in promoting growth.

7. Role as support to the chairman

The company secretary has a duty to advise the Board, through the chairman, on all governance matters. Together they should periodically review whether the Board and the company's other governance processes are fit for purpose, and consider any improvements or initiatives that could strengthen the governance of the company. The relationship between the company secretary and the chairman is central to creating an efficient Board.

8. Role in board and committee processes

The company secretary plays a leading role in good governance by helping the Board and its committees function effectively and in accordance with their terms of reference and best practice. Providing support goes beyond scheduling meetings to proactively managing the agenda and ensuring the presentation of high quality up-to-date information in advance of meetings. This should enable directors to contribute fully in board discussions and debate and to enhance the capability of the Board for good decision making. Following meetings the company secretary should pursue and manage follow up actions and report on matters arising.

9. Role in Board development

All directors should have access to the advice and services of the company secretary. The company secretary should build effective working relationships with all board members, offering impartial advice and acting in the best interests of the company. In promoting board development the company secretary should assist the chairman with all development processes including board evaluation, induction and training. This should involve implementing a rigorous annual board, committee and individual director assessment and ensuring actions arising from the reviews are completed. Further, the company secretary should take

the lead in developing tailored induction plans for new directors and devising a training plan for individual directors and the board. Although these tasks are ultimately the responsibility of the chairman, the company secretary can add value by fulfilling, or procuring the fulfilment of, these best practice governance requirements on behalf of the chairman.

10. Communication with stakeholders

The company secretary is a unique interface between the board and management and as such they act as an important link between the board and the business. Through effective communication they can coach management to understanding the expectations of, and value brought by the board. The company secretary also has an important role in communicating with external stakeholders, such as investors, and is often the first point of contact for queries. The company secretary should work closely with the chairman and the board to ensure that effective shareholder relations are maintained.

11. Disclosure and reporting

In recent years there has been increased emphasis in the quality of corporate governance reporting and calls for increased transparency. The company secretary usually has responsibility for drafting the governance section of the company's annual report and ensuring that all reports are made available to shareholders according to the relevant regulatory or listing requirements.

LESSON ROUND UP

- The Company Secretary act as a bridge for information, communication, advice, and arbitration between the board and management and between the organization and its shareholders and stakeholders.
- The Company Secretary in Employment can act as the Whole-time Company Secretary, Key Managerial Personnel (KMP), Compliance Officer, Senior Management in the companies.
- The Company Secretary in Practice can act as Secretarial Auditor, Expert, Registered Valuer, Insolvency Professional, Internal Auditor, GST Professional, Certification Services, Representation services, IPR Expert, Expert beyond Company Law etc.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation)

1. Explain the duties and functions of the company secretaries as provided under the Companies Act, 2013.
2. "The position of the company secretary is required to have holistic view on the governance framework of the company" Comment.
3. "India is the world's fastest growing domestic aviation market" in the light of this statement highlight the recent developments in the Indian aviation industry.

[illegible]

Lesson 8

Audits

LESSON OUTLINE

- Overview and introduction of Various Audits
- Corporate Governance Audit
- CSR Audit
- Insider Trading Audit
- Labour Law Audit
- Cyber Audit
- Environment Audit
- Forensic Audit
- Social Audit
- Takeover Audit
- ICSI Auditing Standards
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The subject of Auditing is as ancient as Accounting. Its traces can be found in ancient civilization such as Mesopotamia, Greece, Egypt, Rome, U.K. and India. Even the Vedas contain reference to accounts and auditing. Artha sashthra by Kautilya detailed rules for accounting and auditing of public finances. For Company Secretaries the scope for engagement as an auditor is widen after the enactment of Companies Act, 2013. It is very important for students to aware about the various opportunities available to them in the field of auditing along with the principle and techniques of the auditing.

This lesson covers the overview of various types of audits performed in the corporates by the professionals.

OVERVIEW AND INTRODUCTION OF VARIOUS AUDITS

An audit refers to a systematic and independent examination of books, accounts, statutory records, documents and vouchers of an organization to ascertain that how far the financial and non-financial statements and disclosures present a true and fair view of the company.

Broadly, the audit can be classified into two types of audit i.e. the Financial Audit and the Compliance Audit, the Financial Audit covers the Statutory Audit, Cost Audit and Internal Audit whereas the Compliance Audit covers the Secretarial Audit, CSR Audit, and Corporate Governance Audit, Take over Audit, Insider trading Audit, Labour law Audit, Cyber Audit, System Audit, Social Audit and Forensic Audit, Related Party Audit etc. The company as a part of the internal review periodically conducts the audits of other functions of the organization like Stock Audit, HR Audit, Branch Audit, Performance Audit, IT Audit and Environment Audit etc. which helps in the development of the internal function of the company.

Sections 139 to 147 under chapter X of the Companies Act, 2013 along with the Companies (Audit and Auditors) Rules, 2014 contain provisions regarding audit and auditors covering the appointment, removal, resignation of auditors, eligibility, qualifications and disqualifications of auditors, remuneration of auditors, powers and duties of auditors etc. for the statutory auditors of the company. According to the section 143(12), the provision of the Section 143 i.e. power and duties of the Auditors are *mutatis mutandis* applicable to the cost accountant conducting cost audit under section 148 and the company secretary in practice conducting secretarial audit under section 204 of the Companies Act, 2013. The Companies Act, 2013 contains the provisions relating to the following Audits:

1. Internal Audit (Section 138)
2. Statutory Audit (Section 139 to 147)
3. Cost Audit (Section 148)
4. Secretarial Audit (Section 204)

The brief description of the various audit prescribed under various legislations are provided below, However the detailed procedure of such audits are covered under the respective chapters of the study material.

(1) CORPORATE GOVERNANCE AUDIT

Corporate governance audit is a strategic audit to ensure that all processes including the requirement under laws, policies, procedures that are necessary for directing and controlling a business enterprise are implemented effectively. Audit of corporate governance processes provides assurance to the various stakeholders that all the required governance activities have been accomplished and what remains otherwise thereby assisting stakeholders in making an informed decision. Stakeholders don't like to receive surprises and audit of corporate governance activities shall ensure an effective check mechanism on the supervisory and managerial layers of a business enterprise. Corporate Governance Audit mechanism works primarily through Audit Committee and the Auditor.

Scope of Audit of Corporate Governance Activities

The scope of Corporate Governance Audit is wide and generally boundary less, as the subject covers:

1. Financial and non-financial Stakeholders
2. Boards of Directors (Composition, Mix, Independence)
3. Committees of the Boards and terms of References
4. Control Environment (Accounting, Controls, Internal and External Audit)
5. Risk Management

6. Transparency and Disclosure of financial information and executive compensation
7. Strategic plans, programs and guidance on social responsibilities.

In India, the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 are the principle governing laws on corporate governance.

(2) CORPORATE SOCIAL RESPONSIBILITY (CSR) AUDIT

A Corporate Social Responsibility audit aims at identifying environmental, social or governance risks faced by the organization and evaluating managerial performance in respect of those. Corporate Social Responsibility ("CSR") is a broad term, however, for the purpose of addressing the scope of a CSR Audit, CSR is about managing and taking into consideration organization's operational, processes and behavioral impact on society and stakeholders from a broad perspective. Contrary to common belief CSR is more than basic legal compliance and is highly connected with and affects organization's bottom line.

Purpose of CSR Audit:

- To ensure compliance with the provisions of Companies Act, 2013 with respect to constitution of the Committee, adoption of policy and appropriate spending towards CSR activities.
- To facilitate transparent monitoring mechanism and a mentor for the Company's CSR activities and implementation of CSR policy.
- To evaluate internal control and governance framework.
- To assess the project life cycle.
- To conduct financial review of projects to confirm the utilization of budgets for achieving desired outcomes.

Though the Companies Act, 2013 does not prescribe for the CSR Audit, but the companies' voluntarily undertake the CSR Audits to measure effectiveness of the CSR Programmes of the company.

(3) INSIDER TRADING AUDIT

In India the SEBI (Prohibition of Insiders Trading) Regulation, 2015 is the primary regulation which covers the insider trading activities.

Insider trading issues have resulted in significant importance in listed companies in the last few years. The directors, agents and other officers were found to be using insider information for profitably speculating in securities of their own company. The insider trading occurred due to (i) the possession of information by these people; (ii) before everybody else; (iii) regarding the changes in the economic condition of companies and particularly, regarding the size of dividends to be declared, or issue of bonus shares etc.

The SEBI (Prohibition of Insider trading) Regulations, 2015 provides that the board may appoint a qualified auditor to investigate into the books of account or the affairs of the insider or any other person as may be directed by the board. The auditor so appointed shall have the same powers of the inspecting authority as stated in insider trading regulations.

Also, SEBI has put in place a mechanism for preventing and controlling insider trading by putting primary responsibility to monitor and regulate insider trading activities on the company through the compliance officer and audit committee.

For the purpose of ensuring compliance with the insider trading regulations, the following would be some of the essential inputs to enable review and to report the status:

- Code of conduct, framed in the lines of model code specified in the schedule I of Insider Trading

Regulations;

- Appointment of compliance officer:
- Responsibility discharged by the compliance officer, preservation of price sensitive information, closing of specific trading window;
- Prior approval of trading;
- Reporting requirement by the directors / officers / designated employees;
- Restricted list for trading;
- Disclosure by any person holding more than 5% of shares or voting rights and promoter or promoter group, code of corporate disclosure policy.

(4) LABOUR LAW AUDIT

Labour law audit is a process of facts findings and it is a continuous process. Labour law audit ensures a win - win situation for all the stakeholders. Audit under the labour and employment laws is an effective tool for compliance management of labour, employment and industrial laws. Audit helps to detect non – compliance of labour and employment laws applicable to a business and take corrective measures to avoid any unwarranted legal actions by the regulators against the business and its management.

Though labour law audit is not compulsory, but it is highly recommendatory to conduct this audit. Audit helps to detect non-compliance of labour and employment laws applicable to a business and take corrective measures to avoid any unwarranted legal actions by the regulators against the business and its management. Labor audits seek to determine employee attitudes toward the employer and to identify possible areas of vulnerability to a union organizing drive.

Labour audit cover all labour legislations applicable to an industry/business or any other commercial establishment, wherein audit is being conducted by the labour law auditor. Scope of labour law audit will certainly differ from business to business. For example, if the business does not have a factory, the provisions of Factories Act, 1948 and any rules/regulations made thereunder won't be applicable on such business. Similarly, certain factories in remote areas may not have the facilities of Employees State Insurance Corporation. In such cases, there is no need to ensure compliance of ESI Act.

(5) CYBER AUDIT

In Cyber audit team of professional conducts an organizational review to ensure that the correct and most up to date cyber and IT processes and infrastructure are being applied. A cyber audit also includes a series of tests that guarantee that information security meets all expectations and requirements within an organization.

The cyber security management audit/assurance review will provide management with an assessment of the effectiveness of the information security management function evaluate the scope of the information security management organization and determine whether essential security functions are being addressed effectively, It is not designed to replace or focus on audits that provide assurance of specific configurations or operational processes.

In Cyber Audit the Internal auditors and risk management professionals have key roles to play in the Information Management function of the company. In the era of global digital economy it is critical to protecting enterprise information from the insider as well as the outsider hackers. The internal audit department plays a vital role in cyber security auditing in many organizations, and often has a dotted-line reporting relationship to the audit committee to ensure an independent view is being communicated to the board on the Data Security. Audit helps enterprises with the challenges of managing cyber threats, by providing an objective evaluation of the controls and making recommendations to improve them as well as assisting the senior management and the board

of directors understand and respond to cyber risks. Organizations, especially within the public sector, also contract for the services of external auditors to provide independent assurance of the financial and operational controls primarily to ensure the controls design is effective and the needs of the organization are being met. Effective risk management is the product of multiple layers of risk defense. Internal Audit should support the board's need to understand the effectiveness of cyber security controls. A cyber security assessment drives a risk-based IT internal audit plan. Audit frequency should correspond to the level of risk identified, and applicable regulatory requirements/expectations. An assessment of the organization's cyber security should evaluate specific capabilities across multiple domains.

(6) ENVIRONMENT AUDIT

Environmental audit is a general term that can reflect various types of evaluations intended to identify environmental compliance and management system implementation gaps, along with related corrective actions and it has a wide variety of meanings. Environmental Audit refers to verification and assessment of environmental measures in an organisation.

There are generally two different types of environmental audits: compliance audits and management systems audits. These audits are intended to review the site's/company's legal compliance status in an operational context. Compliance audits generally begin with determining the applicable compliance requirements against which the operations will be assessed. This tends to include Central Law, State Laws, permits and local laws. In some cases, it may also include requirements within legal action.

Need for Environment Audit

- Business can assess the environmental impact of their operations.
- To ensure that the corporate decisions are not spoiling company's market for its products, destroying the source of essential supply, damaging or polluting the very infrastructure that makes usage and demand of the product grow.
- It highlights areas of inefficiencies in process e.g. Where the amount of resources used are out of proportion to the amount of saleable items/ services produced.
- It highlights excessive wastes.
- It provides opportunity for business to decrease its wastes output and reduce the cost of waste treatment or waste disposal.

(7) FORENSIC AUDIT

Forensic Audit is a dynamic and strategic tool in combating corruption, financial crimes and frauds through investigations and resolving allegations of fraud and embezzlement. It may be conducted to determine negligence. Forensic is the application of science to crime concerns. Forensic science is science which is applied to legal matters especially criminal matters.

Recent corporate accounting scandals at various corporates forensic auditing has now considered as new area of auditing to detect the frauds in companies that suspected fraudulent transactions.

A Forensic Audit is a comprehensive and systematic process involving a series of activities and tasks undertaken for establishing the accuracy and authenticity of the transactions under review.

The term Forensic Audit refers to the specific guidance carried out in order to produce evidence. Forensic Audit task involves an investigation into the financial affairs of the entity and is often associated with investigation into the alleged fraudulent activity. The object of forensic auditing is to relate the findings of audit by examining and gathering legally tenable evidence and producing it to the Court. In the process the corporate veil is lifted in case of corporate entities to identify the fraud and the persons responsible for it. Forensic auditing involves

application of audit skills to legally determine whether fraud has actually occurred. The entire process includes planning, gathering evidence, reviewing the evidence and reporting of the same. In the process it aims at naming the person(s) involved in the fraud with a view to take legal action.

Forensic Audit Report is statement of observation gathered & considered while proving conclusive evidence. It is a medium through which an auditor expresses his opinion under audit after the forensic audit investigation is completed.

(8) SOCIAL AUDIT

A social audit is a way of measuring, understanding, reporting and ultimately improving an organization's social and ethical performance. A social audit helps to narrow gaps between vision/goal and reality, between efficiency and effectiveness. It is a technique to understand, measure, verify, report on and to improve the social performance of the organization.

Social auditing creates an impact upon governance. It values the voice of stakeholders, including marginalized/poor groups whose voices are rarely heard. Social auditing is taken up for the purpose of enhancing local governance, particularly for strengthening accountability and transparency in local bodies.

Social audit is a process of reviewing official records and determining whether the reported expenditures reflect the actual money spent on the ground. A social audit is a formal review of a company's endeavors in social responsibility.

The key difference between development and social audit is that a social audit focuses on the neglected issue of social impacts, while a development audit has a broader focus including environment and economic issues, such as the efficiency of a project or programme.

A social audit is an official evaluation of an organization's involvement in social responsibility projects or endeavors. For example, a local family store makes a clothing donation to a NGO that has a homeless shelter for women and children. The store makes a similar donation three times a year. This is something that a social audit might uncover. Factors examined by a social audit include records of charitable contributions, volunteer events, and efficient utilization of energy, transparency, work environment, and employees' wages.

Implications of Social Audit

- Social auditing creates an impact upon governance. It values the voice of stakeholders, including marginalized/poor groups whose voices are rarely heard.
- Social auditing is taken up for the purpose of *enhancing local governance*, particularly for strengthening accountability and transparency in local bodies.
- Social Audit makes it sure that in democracy, the powers of decision makers should be used as far as possible with the consent and understanding of all concerned.

(9) TAKEOVER AUDIT

To provide the desired results to an investor and to ensure that the acquisition is executed in the most effective manner, the concept of the takeover audit has been evolved, the takeover audit provides a cost benefit analysis to suggest a strategic plan for the long term investment strategy. The audit provides for the Acquisition Audit as well as the Inter se Transfer performed by the acquire

Takeover audit for merger/acquisition/ takeover could be done as three parts: pre-acquisition, post-acquisition and sell-side. Internal auditors or professionals with this domain expertise can contribute significant value by ensuring that a vibrant due diligence process is in place and operating as intended. A rigorous audit vide due diligence process help companies take advantage of legitimate new business opportunities, while at the same time help minimize the risks. A strong audit cum due diligence process is critical to ensure that the acquirer is fully aware of

all aspects of the proposed transaction and provides access to vital intelligence that is used to negotiate the final price and integrate the new subsidiary more effectively.

ICSI AUDITING STANDARDS – AN OVERVIEW

The Companies Act 2013 has introduced the concept of Secretarial Audit (Audit) for Bigger Companies in order to have third party professional assurance in the areas of governance, compliances and disclosures by the companies. ICSI members holding certificate of practice (PCS) have been casted an exclusive responsibility to undertake such audit of companies.

Secretaries have been authorized first time undertake and perform Auditing function under the Companies Act. PCS is required to provide his “Secretarial Audit Report” (Audit Report) in form MR-3 pursuant to the provisions of Section 204(1) and Rule 9 of the Companies (Appointment & Remuneration Personnel) Rules 2014 to the members of the Company.

First such audit reports were issued by PCS for the FY 2014-15. The present limits for companies to have mandatory secretarial audit is as under;

- All listed companies; or
- Public Company having paid up share capital of Rs 50 cr or more; or
- Public company having turnover of Rs 250 Cr or more.

PCS has also been casted a duty to detect and report the frauds in the Companies while performing the duties as Auditor. Initially, a lot of challenges was there in conducting audits and in developing auditing acumen and undertaking the function of detection of frauds.

Accordingly, ICSI has taken initiatives in the area of Auditing and to strengthen the auditing acumen and detection abilities of PCS it was decided to develop the auditing techniques and tools to undertake secretarial audits of other companies.

The ICSI has setup an Auditing Standards Board for laying down the foundations of Company Secretaries Auditing Standards (CSAS) in India and for inculcation of best auditing practices among its members.

Observance of ICSI auditing for standards by PCS, will lead to good governance, compliance and transparency among the companies. It will also help the PCS to comply with its important function of detection and reporting of frauds.

ICSI Auditing Standards

The Council of the Institute of Company Secretaries of India (ICSI) has approved the issuance of four ICSI Auditing Standards. The Standards are required to be observed by the Company Secretaries undertaking Audits. The Standards seek to promote best auditing practices, uniformity and consistency while conducting audits. The four Standards namely

CSAS-1: Auditing Standard on Audit Engagement which lays down the Auditor’s role and responsibilities with respect to an Audit Engagement and the process of entering into an understanding/agreement with the Appointing Authority for the purpose of audit.

CSAS-2: Auditing Standard on Audit Process and Documentation which lays down the responsibilities and duties of the Auditor with respect to Audit Process in conducting audit and maintaining proper audit records

CSAS-3: Auditing Standard on Forming of Opinion covers the basis and manner for forming Auditor’s opinion on subject matter of the audit

CSAS-4: Auditing Standard on Secretarial Audit covers the basis and manner for carrying out the Secretarial Audit

These standards are applicable on recommendatory basis on Audit engagements accepted by the Auditor on or after 1st July, 2019; and mandatory for Audit engagements accepted by the Auditor on or after 1st April, 2020

CSAS-1 Auditing Standard on Audit Engagement

Scope

This Auditing Standard ('the Standard') is applicable to the Auditor undertaking Audit Engagement under any statute. The Standard deals with the Auditor's role and responsibilities with respect to an Audit Engagement and the process of entering into an understanding/agreement with the Appointing Authority for the purpose of audit.

Effective Date

The Standard is effective and recommendatory for Audit Engagements accepted by the Auditor on or after 1st July, 2019 and mandatory for Audit Engagements accepted by the Auditor on or after 1st April, 2020.

Objective

The objective of the Standard is to prescribe for the Auditor, principles and procedures to be followed while accepting or continuing with an Audit Engagement by agreeing to the terms of engagement with the Appointing Authority or any changes therein and matters relating thereto.

Definitions

For the purpose of Auditing Standards (CSAS) issued by The Institute of Company Secretaries of India (ICSI), the following terms shall have the meaning attributed as below, unless specified otherwise:

- (1) "Appointing Authority" means any person having authority to appoint the Auditor.
- (2) "Audit Engagement" means detailed terms of reference of appointment including scope of audit, remuneration and limiting conditions, if any.
- (3) "Auditee" means a person subject to audit.
- (4) "Auditor" means a Company Secretary who is deemed to be in practice under sub-section (2) of Section 2 of the Company Secretaries Act, 1980 including a firm or Limited Liability Partnership (LLP) registered with ICSI undertaking the Audit.
- (5) "Management" includes Board of Directors and persons who have been entrusted with the responsibility of governance and compliances of the Auditee.
- (6) "Predecessor or Previous Auditor" means an Auditor who has conducted the most recent audit assignment of the Auditee and submitted report thereon prior to the incumbent Auditor or was engaged but did not complete the audit assignment due to his resignation, termination or otherwise.

1. Audit Engagement Process

The Auditor shall undertake the following steps with respect to the Audit Engagement:

1.1 Appointment

- 1.1.1 The appointment of Auditor shall be made in the manner prescribed in the applicable laws, act, rules, regulations, standards and guidelines or in case no such manner has been prescribed, such appointment shall be made in the manner determined by the Appointing Authority.
- 1.1.2 The Auditor shall submit a Certificate to the Appointing Authority confirming eligibility for appointment as Auditor.
- 1.1.3 The Auditor shall obtain an Audit Engagement Letter along with a copy of the resolution, if any, passed by the Appointing Authority and shall provide acceptance to the Appointing Authority.

1.2 Audit Engagement Letter

The Audit Engagement Letter shall inter alia include:

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

In case where the objective and scope of the audit and responsibilities of the Management and of the Auditor have been established by law, the Audit Engagement Letter shall give a reference to the provisions of the relevant law along with a statement that the Management acknowledges and understands its responsibilities for preparation and maintenance of records and for devising proper systems to ensure compliance with the provisions of applicable laws, rules, regulations and standards applicable for the time being in force.

1.3 Intimation to the Predecessor or Previous Auditor

The Auditor shall intimate in writing to the Predecessor or Previous Auditor, if any, before accepting the Audit Engagement.

2. Limits on Audit Engagements

The Auditor shall accept Audit Engagements within the limits of number of audits, if any, as may be prescribed under any law for the time being in force or by the ICSI from time to time.

3. Conflict of Interest

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

Explanation: Conflict of Interest means:

- 3.1 **Ownership:** Where the Auditor singly or along with partners, spouse, parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, holds more than 2% in the paid up share capital or shares of nominal value of Rs. 50,000, whichever is lower or more than 2% voting power, as the case may be, the same shall be considered as substantial conflict of interest.
- 3.2 **Financial Interest:** Where the Auditor is indebted to the Auditee for an amount of five lakh rupees or more. However, financial indebtedness arising out of ordinary course of business will not constitute conflict of interest. Indebtedness that may seriously impair the independence of the Auditor shall be considered as substantial conflict of interest.
- 3.3 **Past Employment Relationship:** Where an Auditor was in employment of the Auditee, its holding or subsidiary company and 2 (two) years have not lapsed from the date of cessation of employment, the same shall be considered as substantial conflict of interest.

4. Confidentiality

- 4.1 The Auditor shall not disclose the information obtained during the course of Audit without proper and specific authority or unless there is a legal obligation or duty to disclose.
- 4.2 The Auditor shall not use or share with any person any information obtained except for the purposes of audit.
- 4.3 The Auditor shall take all reasonable steps to ensure that employees, staff and other team members of the Auditor and persons engaged by the Auditor to provide advice or assistance during the conduct of audit, shall also adhere to the Auditor's duty of confidentiality.

5. Changes in terms of engagement

- 5.1 The Auditor shall not agree to a change in the terms of the Audit Engagement where there is no reasonable justification for doing so.
- 5.2 If before completion of the assignment, the Auditor is requested by the Appointing Authority to change the scope of engagement, resulting in a lower level of assurance, the Auditor shall consider the appropriateness of carrying out the same.
- 5.3 If the terms of the Audit Engagement are changed, the Auditor and the Appointing Authority shall agree on the new terms of the engagement by way of a supplementary/revised engagement letter or any other suitable form in writing.

CSAS-2 Auditing Standard on Audit Process and Documentation**Scope**

This Auditing Standard ('the Standard') is applicable to the Auditor undertaking Audit under any statute. The Standard deals with responsibilities and duties of the Auditor with respect to Audit Process in conducting audit and maintaining proper audit records.

Effective Date

The Standard is effective and recommendatory for Audit Engagements accepted by the Auditor on or after 1st July, 2019 and mandatory for Audit Engagements accepted by the Auditor on or after 1st April, 2020.

Objective

The objective of the Standard is to prescribe principles for an Auditor:

- (i) to conduct audit as per the specified audit process;
- (ii) to maintain documentation that provide:
 - (a) sufficient and appropriate record to form the basis for the Auditor's Report; and
 - (b) evidence that the audit was planned and performed in accordance with the applicable Auditing Standards and statutory requirements.

Definitions

For the purpose of Auditing Standards (CSAS) issued by The Institute of Company Secretaries of India ('ICSI'), the following terms shall have the meaning attributed as below, unless specified otherwise :

- (1) "Audit Documentation" means the working papers prepared or records obtained by the Auditor in connection with the audit.
- (2) "Audit Evidence" refers to relevant information and documents gathered in the course of the audit for arriving at the conclusion on which the Auditor's opinion is based.

- (3) “Management” as defined in CSAS-1.

1. Audit Planning

- 1.1 The Auditor shall make audit plan to conduct audit as per the terms of Audit Engagement.
- 1.2 Audit planning means establishing and developing an overall audit process, including but not limited to:
 - a. Identification of broad audit areas;
 - b. Seeking 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. Audit technique;
 - f. Allocation of audit resources for the audit; and
 - g. Preparation of audit schedule.
- 1.3 The audit shall be planned in a manner which ensures that qualitative audit is carried out in an efficient, effective and timely manner. Audit planning shall ensure that appropriate attention is accorded to crucial areas of audit and significant issues are identified in a timely manner.
- 1.4 The Auditor shall plan the audit with professional skepticism so that it is possible to exercise professional judgment in an objective manner.
- 1.5 The Auditor shall adhere to the audit plan. The audit plan may be modified, if circumstances so warrant.

2. Risk Assessment

- 2.1 Risk assessment of the Auditee with respect to and connected/relevant to the Audit Engagement shall be done considering industrial & business environment, organizational structure and compliance requirements.
- 2.2 The Auditor shall evaluate high risk areas/activities of the Auditee relating to:
 - a. Internal control systems and processes of the Auditee for adherence to the constitutional documents, applicable laws, rules, regulations and standards;
 - b. Transparency, prudence and probity; and
 - c. Changes/Attrition in the compliance team and frequency of such changes and attrition.

3. Information about the Auditee

The Auditor shall obtain sufficient information about the Auditee that is relevant for conduct of audit and forming an opinion and its expression.

4. Audit Check-lists

The Auditor shall use systematic and comprehensive audit check-lists for carrying out the audit and to verify the compliance requirements.

5. Collection and Verification of Audit Evidence

- 5.1 The Auditor shall verify compliance with applicable laws, rules, regulations and standards. The deviation if any shall be recorded.

- 5.2 The Auditor shall obtain complete, relevant and necessary evidence to support the opinion.
- 5.3 The process of gathering and evaluating evidence shall continue until the Auditor is satisfied that sufficient and appropriate evidence exists to provide a basis for formation of the Audit Opinion.

6. Third Party Confirmation

The Auditor shall obtain confirmations from third party(ies), wherever required, with respect to information which is related to such party(ies).

7. Analysis of Audit Evidence

- 7.1 The Auditor shall evaluate the Audit Evidence to arrive at the conclusion.
- 7.2 While evaluating evidence, if the Auditor finds that Audit Evidence is conflicting, the Auditor shall assess the extent and credibility of conflicting evidence in order to reach a conclusion or collect more evidence to resolve the conflict.

8. Documentation

- 8.1 The Auditor shall adequately document the Audit Evidence in working papers, including the basis and extent of planning, work performed and the findings of audit.
- 8.2 The Audit Documentation shall contain sufficient information to enable an Auditor, having no previous connection with the audit, to ascertain from such documentation, the significant findings and conclusions of the Auditor.
- 8.3 Audit Documentation shall take place throughout the audit process. Working papers shall be complete and appropriately detailed to provide a clear trail of the audit.

Audit Documentation shall be properly indexed, referenced with and supplemented by the set of working papers.
- 8.4 The Auditor shall also document discussions with the Management with respect to significant matters in respect of which written record is not available.

9. Record Keeping and Retention

- 9.1 The Auditor shall establish policies and procedures for retention of Audit Documentation.
- 9.2 The Audit Documentation shall be collated for records within a period of 45 days from the date of signing of Auditor's Report.
- 9.3 The Audit Documentation shall be maintained in physical or electronic form and retained for a period of 8 years from the date of signing of Auditor's Report.

CSAS-3 Auditing Standard on Forming of Opinion

Scope

This Auditing Standard ('the Standard') is applicable to the Auditor undertaking Audit under any statute. The Standard deals with basis and manner for forming Auditor's opinion on subject matter of the audit.

Effective Date

The Standard is effective and recommendatory for Audit Engagements accepted by the Auditor on or after 1st July, 2019 and mandatory for Audit Engagements accepted by the Auditor on or after 1st April, 2020.

Objective

The objective of the Standard is to enable the Auditor to lay down the basis and manner for evaluation of the

conclusions drawn from the Audit Evidence obtained and express the opinion through written report.

Definitions

For the purpose of Auditing Standards (CSAS) issued by The Institute of Company Secretaries of India ('ICSI'), the following terms shall have the meaning attributed as below, unless specified otherwise:

- (1) "Audit Evidence" as defined in CSAS-2.
- (2) "Misstatement" means any information or statement which is false, incorrect, incomplete, misleading, misrepresents or omits or suppresses a material fact.
- (3) "Materiality" is the threshold above which missing or incorrect information is considered to have an impact on the decision making of the Auditor. Information is considered as material if its omission or misstatement could influence the opinion of the Auditor. Materiality can also be construed in terms of net impact.
- (4) "Records" include:
 - (i) Memorandum and Articles of Association, byelaws or any other constitutional documents;
 - (ii) Minutes, returns, forms, indexes and Registers;
 - (iii) Books and papers including books of accounts, deeds, vouchers;
 - (iv) Agreements, Memorandum of Understanding;
 - (v) Other documents maintained by the Auditee either in physical or electronic form; and
 - (vi) Correspondence.
- (5) "Third Party" means any person who does not have a direct connection with the audit but whose inputs or opinion might influence the audit conclusion and includes an expert.

1. Process for forming of opinion

- 1.1 The Auditor shall consider Materiality while forming his opinion and adhere to:
 - a. The principle of completeness that requires the Auditor to consider all relevant Audit Evidence before issuing a report;
 - b. The principle of objectivity that requires the Auditor to apply professional judgment and scepticism in order to ensure that all reports are factually correct and that findings or conclusions are presented in a relevant and appropriate manner;
 - c. The principle of timeliness that implies preparing the report in due time; and
 - d. The principle of a contradictory process that implies checking the accuracy of facts and incorporating responses from concerned persons.
- 1.2 Judgment, Clarification and Conflicting Interpretation

The Auditor may consider various judgments, clarifications, opinion, conflicting interpretations while framing the opinion to the best of his professional acumen.

2. Precedence and Practices

The Auditor shall adhere to generally accepted precedence and practices in relation to forming of an opinion as may be available from historical perspective of any kind of audit.

3. Third Party Report or Opinion

The Auditor shall adhere to the following while forming an opinion based on Third Party reports or opinions:

- (a) The Auditor shall indicate the fact of use of Third Party report or opinion and shall also record the circumstances necessitating the use of third party report or opinion;
- (b) The Auditor shall indicate the fact if Third Party report or opinion is provided by the Auditee;
- (c) The Auditor shall consider the important findings/ observation of Third Party;
- (d) The Auditor shall, if necessary and feasible, carry out a supplemental test to check veracity of the Third Party report or opinion.

4. Form of an Opinion and Qualification

4.1 Unmodified Opinion

The Auditor shall express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:

- a. there is due compliance with the applicable laws in terms of timelines and process; and
- b. the records as relevant for the audit verified by him as a whole are free from misstatement and maintained in accordance with the applicable laws.

4.2 Modified Opinion

4.2.1 The Auditor shall express modified opinion when the Auditor concludes that:

- (a) based on the Audit Evidence obtained, there is non-compliance with the applicable laws in terms of timelines and process; or
- (b) based on the Audit Evidence obtained, the Records as a whole are not free from Misstatement; or are not maintained in accordance with applicable laws; or
- (c) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process; or
- (d) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that the Records as a whole are free from Misstatement; or are maintained in accordance with applicable laws.

4.2.2 Whenever the Auditor expresses a modified opinion or disclaims an opinion, the text of the opinion shall be either in italics or bold letters.

4.3 Limitation

4.3.1 If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation.

4.3.2 If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence.

4.3.3 If the Auditor is unable to obtain sufficient and appropriate Audit Evidence, the Auditor shall determine the implications as follows:

- a. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be non-material, the Auditor shall qualify the opinion; or
- b. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be material, the Auditor shall express disclaimer of opinion.

5. Auditor's Responsibility

- 5.1 The Auditor's Report shall include a section with the heading "Auditor's Responsibility". Auditor's Report shall state that the responsibility of the Auditor is to express opinion on the compliance with the applicable laws and maintenance of records based on audit. The Auditor's Report shall also state that the audit was conducted in accordance with applicable Standards. The Auditor's Report shall also explain that those Standards require that the Auditor comply with statutory and regulatory requirements and plan and perform the audit to obtain reasonable assurance about compliance with applicable laws and maintenance of records.
- 5.2 Auditor's Report shall state that due to the inherent limitations of an audit including internal, financial and operating controls, there is an unavoidable risk that some material misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the Standards.

6. Format of Report

- 6.1 The report shall be addressed to the Appointing Authority unless otherwise specified in the Audit Engagement Letter or provided in the applicable law. The report shall be detailed enough to serve its intended purpose. Where specific formats (like MR-3 for Secretarial Audit Report) are prescribed, those formats shall be followed for reporting. If any information cannot be conveniently captured within the paragraphs of the report, it shall be given in form of annexure(s).
- 6.2 Signature block shall mention the name of the audit firm along with the registration number, if any, the name of the Auditor, certificate of practice number, the membership number of the Auditor, specifying whether associate or fellow member, as applicable. The Auditor shall clearly mention date and place of signing the report, in case report is signed by two different persons on different dates or different places; same shall be mentioned in the report.

CSAS-4 Auditing Standard on Secretarial Audit

Scope

This Auditing Standard ('the Standard') is applicable to the Auditor undertaking Secretarial Audit under Section 204 of the Companies Act, 2013 and rules made thereunder. The Standard deals with basis and manner for carrying out the Secretarial Audit.

Effective Date

The Standard is effective and recommendatory for Secretarial Audit accepted by the Auditor on or after 1st July, 2019 and mandatory for Secretarial Audit accepted by the Auditor on or after 1st April, 2020.

Objective

The objective of the Standard is to lay down the principles for evaluation of statutory compliances and corporate conduct in relation thereto.

Adherence to other Auditing Standards

The Auditor shall adhere to the Auditing Standards on – (a) Audit Engagement (CSAS-1); (b) Audit Process and Documentation (CSAS-2); and (c) Forming of Opinion (CSAS-3).

Definitions

For the purpose of Auditing Standards (CSAS) issued by The Institute of Company Secretaries of India ('ICSI'), the following terms shall have the meaning attributed as below, unless specified otherwise:

- (1) "Management" as defined in CSAS-1

- (2) "Records" as defined in CSAS-3.

1. Identification and segregation of applicable laws

The Auditor shall take note of the industry specific laws and other laws as may be applicable to the Auditee based on the identification/segregation by the Management and his own verification.

2. Verification of corporate conduct and compliance of laws

2.1 Identification of Events/Corporate Actions

The Auditor shall identify events/corporate actions that took place during the audit period. The identification shall be made by reviewing the website of the regulators, website of the Auditee, statutory records including books and papers, interaction with the Management and in any other appropriate manner.

2.2 Verification of Compliance

The Auditor shall verify all event and calendar based compliances from the Records of the Auditee, database or website of the regulators and other relevant sources.

3. Board Composition

The Auditor shall verify compliance of the Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, agreement with Lenders/Investors, Articles of Association and provisions of other Acts / rules/ regulations, guidelines and policies, board decisions, shareholders decisions, as may be applicable to the Auditee with regard to:

- 3.1 Overall composition of the Board including the minimum and maximum strength of the Board.
- 3.2 Optimum combination of the Board including proportion of executive, non-executive, independent, non-independent, retiring, non- retiring, woman and nominee director.
- 3.3 Eligibility criteria including disqualifications of directors.
- 3.4 The constitution and composition of Committees of the Board.

4. Board Processes

The Auditor shall verify that the decisions of the Board and its Committees are taken and recorded in compliance with applicable laws, rules, regulations, guidelines, standards and defined internal processes, if any.

5. System and Process

System and process broadly refers to the framework of legal and procedural compliances of the Auditee including but not limited to internal regulations, control, guidance and governance.

The Auditor shall assess the efficacy and adequacy of the system and processes of the Auditee commensurate with its size and operation for verifying compliance of applicable laws, rules, regulations, standards, guidelines and defined internal processes, if any by:

- 5.1 Reviewing records maintained by the Auditee.
- 5.2 Understanding compliance responsibility centers, control points, matrix, flow of information, escalation of non-compliances to different levels, reporting of any noncompliance.
- 5.3 Assessing compliance mechanism and understanding its extent, coverage and severity mapping. The Auditor shall also assess compliance manual/standard operating procedures, if any, available with the Auditee.

- 5.4 Analysing instances of show cause notices received, prosecution initiated, fine or penalties levied, imprisonment ordered, qualification, adverse remark or observations in the statutory, internal or industry specific audit, orders passed by regulatory bodies or judicial/quasi-judicial authorities.

6. Detection of Fraud

- 6.1 The Auditor shall exercise professional judgment and maintain professional scepticism throughout the planning and performance of the audit to detect and report the fraud envisaged under the provisions of Section 143(12) of the Companies Act, 2013 read with Companies (Audit and Auditors) Rules, 2014.
- 6.2 During the course of the audit, if the Auditor suspects commission of any fraud, he shall endeavour to collect further evidence for the same. The suspicion may arise on perusal of internal control systems, complaint under whistle blower mechanism and reports of the other auditors, etc.
- 6.3 The Auditor shall ensure to collect sufficient evidence which substantiates his suspicion of the commission of the fraud against the Auditee by its employees and officers.

7. Reporting of Fraud

- 7.1 If the Auditor has sufficient reason to believe that there is commission of fraud and have justifiable grounds for the same, he shall report to Audit Committee/Board/Central Government as per the process laid down under the Companies Act, 2013 and include the same in Secretarial Audit Report.
- 7.2 The Auditor shall verify whether the Audit Committee/ Board has given any comments on the fraud reported by the auditors in their report in terms of the provisions of the Companies Act, 2013.
- 7.3 The Auditor shall verify if the fraud detected by other Auditor has been reported to the Audit Committee/ Central Government and report the same in the Secretarial Audit Report.

8. Identification and Reporting of the events/actions having major bearing on Auditee's affairs

- 8.1 It shall be the duty of the Auditor to identify and report in the Secretarial Audit Report all events/actions having major bearing on the Auditee's affairs in pursuance of the applicable laws, rules, regulations, guidelines, standards, etc.
- 8.2 An event/action shall be considered as having major bearing on Auditee's affairs if it affects its going concern or alters the charter or capital structure or management or business operation or control, etc.

LESSON ROUND UP

- The audit can be classified in to two type of audit i.e. the Financial Audit and the Compliance Audit, the Financial Audit cover the Statutory Audit, Cost Audit and Internal Audit whereas the Compliance Audit cover the Secretarial Audit, CSR Audit, and Corporate Governance Audit, Take over Audit, Insider trading Audit, Labour law Audit, Cyber Audit, System Audit, Social Audit and Forensic Audit, Related Party Audit etc.
- The key difference between development and social audit is that a social audit focuses on the neglected issue of social impacts, while a development audit has a broader focus including environment and economic issues, such as the efficiency of a project or programme.
- Takeover audit for merger / acquisition / takeover could be done as three parts: pre-acquisition, post-acquisition and sell-side.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answers to these questions are not to be submitted for evaluation)

1. Write short notes on
 - CSR Audit
 - Corporate Governance Audit
 - Insider trading Audit
2. The object of forensic auditing is to relate the findings of audit by examining and gathering legally tenable evidence and producing it to the Court. Comment?

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Lesson 9

Secretarial Audit

LESSON OUTLINE

- Secretarial Audit
- Need for Secretarial Audit
- Secretarial Audit and Company Secretary in Practice
- Applicability of Secretarial Audit
- Scope of Secretarial Audit
- Secretarial Audit- the process
- Verification of Compliances
- Panel Provisions
- Guiding criteria for Conducting Secretarial Audit
- Guiding principles of Good Corporate conduct and practices
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Secretarial Audit is a proactive governance measure that will have a positive effect on corporate entity. Secretarial Audit is a form of Compliance Auditing that is used in carrying out auditing of compliances with all laws, rules and regulatory requirements applicable to the company. It looks into all the events, compliance and records created during the audit period to check whether the Company really complies with the applicable laws and standards.

It may be noted that creation of the checklist of Secretarial Audit differs from company to company. Hence, it is advised to the student to also see updates on the changes in the various Compliance requirements.

The objective of the study lesson is to familiarize the students with the process of conducting Secretarial Audit and various aspects of legal compliance requirements stipulated under the Secretarial Audit prescribed under section 204 of the Companies Act, 2013.

SECRETARIAL AUDIT

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 practice. 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 accordingly an independent and objective assurance activity intended to add value and improve operations of a company. It helps to accomplish the organization's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

NEED FOR SECRETARIAL AUDIT

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

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

SECRETARIAL AUDIT & COMPANY SECRETARY IN PRACTICE (PCS)

A Company Secretary in practice is a professional who is well-versed in matters of statutory, procedural and practical aspects of laws applicable to companies, both listed and unlisted public and private companies. A strong knowledge base makes him a competent professional to conduct Secretarial Audit. In 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.

Students are advised to refer the updated Guidance Note on Secretarial Audit, Guidance note on the Annual

Secretarial Compliance Report for the detailed checklist on the other aspects relating to Secretarial Audit which is not covered in this study material.

APPLICABILITY OF SECRETARIAL AUDIT UNDER COMPANIES ACT, 2013

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 form MR- 3.

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.

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 throughout 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 SECRETARIAL AUDIT UNDER SEBI (LODR) REGULATIONS, 2015

The Committee on Corporate Governance, constituted under the Chairmanship of Shri Uday Kotak, in its report dated October 05, 2017, recommended the following in view of the criticality of secretarial functions to efficient board functioning:

- a. Secretarial audit to be made compulsory for all listed entities under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in line with the provisions of the Companies Act, 2013.
- b. Secretarial audit to be extended to all material unlisted Indian subsidiaries in line with the recommendations of the Committee on strengthening group oversight and improving compliance at a group level for listed entities.

On the basis of the aforesaid recommendations, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have been amended to include the following Regulation 24A:“

24A: Secretarial Audit

Every **listed entity** and its **material unlisted subsidiaries** incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed with effect from the year ended March 31, 2019.

The terms “**listed entity**” means an entity which has listed, on a recognised stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in

accordance with the listing agreement entered into between the entity and the recognised stock exchange(s).

'Designated securities' includes the equity shares, convertible securities, non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares, Indian depository receipts, securitised debt instruments, security receipts, units issued by mutual funds and any other securities as may be specified by the Board.

Material subsidiary mean a subsidiary, whose income or net worth exceeds ten percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

Whereas the regulations provides that 'subsidiary' means a subsidiary as defined under sub-section (87) of section 2 of the Companies Act, 2013 which provides that:

"Subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company -

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.-For the purposes of this clause,-

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression "company" includes any body corporate.

The terms 'net worth' means the aggregate value of the paid-up share capital and all reserves created out of the profits securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Exemptions:

As per regulation 15 of the SEBI (LODR) Regulations, 2015 the compliance specified in regulations 24A, shall not apply, in respect of –

- (a) 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
- (b) the listed entity which has listed its specified securities on the SME Exchange.

However, in case of other listed entities, which are not companies, but body corporate or are subject to regulations under other statutes, the provisions of regulation 24A shall apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant authorities.

Applicability of Section 204 to a 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
- (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.

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 (Public or Private) and required to annexed secretarial audit report with the annual report of the company.

Format of Secretarial Audit Report

Every Secretarial Audit Report is to be submitted in a format prescribed under sub-rule (2) of rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the format of the Secretarial Audit Report shall be in Form No. MR-3 which shall be issued by a Company Secretary in Practice.

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.

The appointment of the Secretarial Auditor should be at the 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.

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 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 important 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 applicable 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.

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 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 owner’s 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.

SCOPE OF SECRETARIAL AUDIT

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

- (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, 2009/2018;
 - (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 (Buy back of Securities) Regulations, 1998/2018;
 - (i) The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- (vi) 'Other laws as may be applicable specifically to the company.'

Further the 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/ The

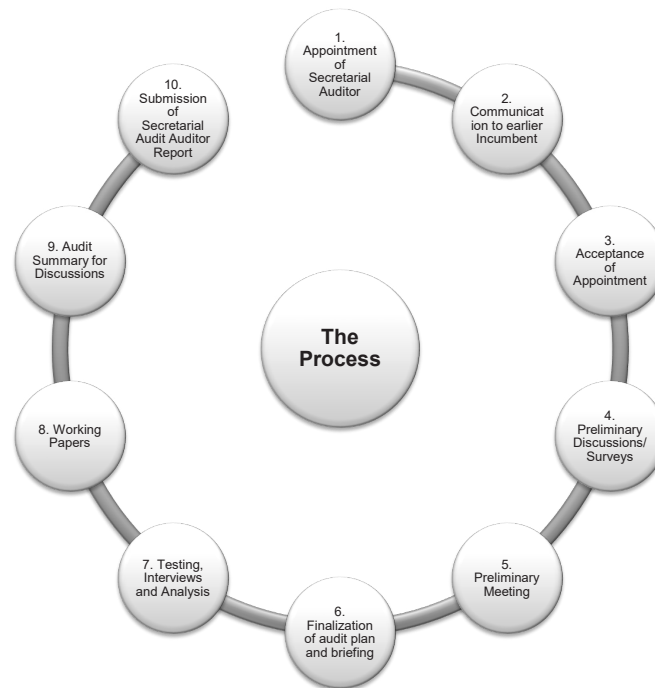
Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015;

Further also the 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 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.

SECRETARIAL AUDIT – THE PROCESS

Secretarial Audit is a process to check compliance with the provisions of all applicable laws and rules/ regulations/procedures; 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 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. The secretarial auditor is also expected to express an opinion, after satisfying himself, that 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. The secretarial auditor has to verify whether diverse requirements under applicable laws have been complied with.



Appointment of Secretarial Auditor

As per Rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, read with Section 179 of the Companies Act, 2013, secretarial auditor is required to be appointed by means of resolution at a duly convened board meeting.

Communication to earlier Incumbent

Whenever a company secretary in practice is engaged as a secretarial auditor in place of an earlier incumbent, he shall communicate to the earlier incumbent about the proposed engagement in writing to be sent by registered/ speed post or any other mode of delivery, as may be recognised by the Institute of Company Secretaries of India.

The Council of ICSI at its meeting held on 16th March, 2019 has made amendments in Guidelines wherein for Practice Company Secretaries, communication to previous incumbent would be mandatory before accepting the assignment, in terms of Clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980. The Council has approved the some services in respect of which it shall be mandatory to communicate to the previous incumbent (Company Secretary) before accepting the assignment in terms of terms of clause (8) of part I of the First Schedule to the Company Secretaries Act, 1980, which includes the Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013 and Issue of Secretarial Audit Report to material unlisted subsidiaries of Listed entities (whose equity shares are listed) under Regulation 24A of SEBI (LODR) Regulations, 2015.

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 should 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

general overview of the operations of the company and interact with the personnel involved to know about the nature of the business. He may opt for surveys for generating information about the company.

Preliminary Meeting

The preliminary meeting with the senior management and the administrative staff involved in the audit will give a fair idea of what is expected and the manner in which audit activities are to be undertaken. 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.

Finalization of Audit Plan and Briefing the Staff

It is important to work out an audit plan. The plan involves briefing the audit staff as to 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 technology to gather information about the company's operations. The secretarial auditor should determine whether the controls identified during the preliminary review are operating properly and in the manner described by the Company.

Fieldwork typically consists of interviewing with staff of the company whether formally or informally, reviewing procedure manuals, and processes, testing and analyzing compliance with applicable policies and procedures and laws, rules, regulations and assessing the adequacy of controls. This exercise may result in significant findings which the secretarial auditor may bear in mind while preparing the secretarial audit report.

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 purpose for the company as well as for the Auditor.

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 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.

VERIFICATION OF COMPLIANCES

(i) Compliance under Companies Act, 2013

The Companies Act, 2013 and rules thereunder is the first legislation covered under the scope of the Secretarial

audit. The Secretarial auditor is expected to update on the amendment in the Act and the Rules & Regulations from time to time. Before commence with the Secretarial audit, the auditors shall go through the following documents, which will help in the identification of the various event held during the audit period, according to which the auditor can prepare the audit plan and can provide the list of document required for the audit purpose to the management of the company:

1. Memorandum and articles of association
2. Minutes of the committee meetings, board meeting, general meetings
3. Directors reports
4. Annual returns of the previous year
5. Filing with the MCA, ROC'S, SEBI and stock exchanges
6. Financial statements
7. Quarterly compliance reports.

Along with the aforesaid documents, the auditor should also go through the following documents during the audit:

1. Forms filed with the Registrar of Companies with receipts.
2. Index of meetings held during the financial year.
3. Agenda papers, noting of discussions, minutes of the board, its committees and of general meeting.
4. Proof of circulation of notice and agenda of board meetings, committee meetings and the general meeting
5. Proof of circulation of draft minutes and final minutes of meeting of board and its committees.
6. Attendance register of board and committee meetings
7. All statutory registers, procedure for maintenance of registers and records and compliances.
8. Copy of financial statement along with notes to accounts and auditor report.
9. Report of internal auditor.
10. Notices of annual and event based disclosure of directors' interests.
11. copies of contracts made between the company and any of the related parties
12. Shareholder list, details of share transfers which have taken place during the financial year
13. Copy of share transfer deeds.
14. Instruments creating, modifying or satisfying charges.
15. Forms relating to disclosures from directors.
16. Certificate from RTA stating the number of shareholders as on the close of the financial year.
17. Certified true board resolution for any type of corporate actions taken by the company.
18. Details of the holding and subsidiary companies.
19. Complete details of shares and debentures issued during the year.
20. Details with respect to maintenance of cost records and appointment of cost auditor.
21. Details of appointment of auditor and internal auditor.

22. The list of related party transactions.
23. Indebtedness certificate signed by company secretary/ chief financial officer of the company.
24. Listing and trading approval(s) from stock exchanges.
25. 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.
26. 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.
27. Corporate action forms filed by the company with depositories.
28. Equity shareholding pattern and its break up as at the close of the financial year.
29. Any orders received by the company from the high court/tribunal or from any other regulatory body.
30. Compliance record under FEMA with respect to FDI, ECB and ODI as applicable.
31. Copies of shareholders and joint ventures agreement, if any.
32. Copy of declaration received from independent director u/s 149(7).
33. Corporate social responsibility (CSR).
34. Directors and key managerial personnel (KMP).
35. Bank statements relating to transfer of dividend to separate bank account, proof of dispatch of dividend within 30 days of dividend.
36. Advertisement/circular relating to deposits;
37. Credit rating certificate, deposit insurance, if any
38. Such other documents as required for the purpose of audit.

(ii) Compliances under Securities (Contract Regulation) Act, 1956 and the 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.

(iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;

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.

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.

As per the rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014, every unlisted public company shall Issue the securities only in dematerialised form; and facilitate dematerialisation of all its existing

securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under

Further, every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, and key managerial personnel has been dematerialized in accordance with provisions of the Depositories Act 1996 and regulations made there under.

(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 Reserve Bank of India by issuing Master Directions provides consolidate instructions on rules and regulations framed by the Reserve Bank under various Acts including banking issues and foreign exchange transactions. The RBI issuing one Master Direction for each subject matter covering all instructions on that subject. Any change in the rules, regulation or policy is communicated during the year by way of circulars/press releases. The Master Directions updated suitably and simultaneously whenever there is a change in the rules/regulations or there is a change in the policy. All the changes will get reflected in the Master Directions available on the RBI website. Students are requested to go through the latest master direction relation to

- (a) Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017
- (b) Foreign Exchange Management (Cross Border Merger) Regulations, 2018
- (c) Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004
- (d) FDI Policy for the relevant period.
- (e) Master Direction – Foreign Investment in India
- (f) Master Direction - Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities.
- (g) Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers.
- (h) Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad
- (i) Master Direction – Reporting under Foreign Exchange Management Act, 1999

(v) Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-

For the purpose of the Secretarial Audit, the following Regulations has been specifically prescribed under form MR-3

- (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, 2009/2018;
- (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, 1998/2018;
- (i) The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(vi) Identification and compliance of specific 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.

Guiding Criteria for Segregation of 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, Sectorial 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' 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.

(vii) Reporting on Compliance with the applicable clause of Secretarial Standards

Section 118 (10) of the Companies Act, 2013 provides that every company to observe Secretarial Standards with respect to General and Board meetings as specified by the Institute of Company Secretaries of India (ICSI). The Secretarial Auditor shall verify that the company has followed the applicable clause of the Secretarial Standards.

Secretarial Standards are in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

The Secretarial Standard-1 is applicable to the Meetings of Board of Directors of all companies incorporated under the Act except One Person Company (OPC) in which there is only one Director on its Board and a company licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof. However, Section 8 companies need to comply with the applicable provisions of the Act relating to Board Meetings. The principles enunciated in SS-1 for Meetings of the Board of Directors are also

applicable to Meetings of Committee(s) of the Board, unless otherwise stated therein or stipulated by any other applicable Guidelines, Rules or Regulations.

The Secretarial Standard-2 is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and a company licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof. However, Section 8 companies need to comply with the applicable provisions of the Act relating to General Meetings. The principles enunciated in this Standard for General Meetings of Members are applicable mutatis-mutandis to Meetings of debenture-holders and creditors.

A Meeting of the Members or class of Members or debenture-holders or creditors of a company under the directions of the Court or the Company Law Board (CLB) or the National Company Law Tribunal (NCLT) or any other prescribed authority shall be governed by this Standard without prejudice to any rules, regulations and directions prescribed for and orders of, such courts, judicial forums and other authorities with respect to the conduct of such Meetings

The Company Secretary in employment as well as in practice are entrusted to ensure the compliance of applicable Secretarial Standards.

(viii) Reporting on the Constitution of the Board

The Secretarial Auditor shall verify that during the year the Board of Directors of the Company is duly constituted with proportion of Executive Directors, Non-Executive Directors, Independent Directors, and Women Director as required under the applicable Laws, Rules & Regulations.

However, he should also confirm that 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 and the SEBI Regulations, if applicable.

(ix) Reporting on Board Processes

The Secretarial Auditor shall verify that during the year 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.

Further, he should also confirm that the majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.

(x) Reporting of the Adequacy of Systems \ Processes

The Secretarial Auditor shall confirm 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.

(xi) Reporting on the Specific Events

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

Professional Responsibility and Penalty for incorrect Secretarial Audit Report

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 whichever 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 Fifty lakh rupees or with both.

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

Guiding Criteria for various stages for conducting Secretarial Audit

(1) Verification of Events and Compliances under Companies Act, 2013

- (1) Documents relating to Boards and its committee which includes
 - Notice of Board Meeting, Agenda, Notes on Agenda, Minutes
 - Notice Committees Meetings Agenda, Notes on Agenda, Minutes
 - Terms of References of the Committees
- (2) Documents Relating to Members Meeting which includes
 - Annual General Meeting Notice, Agenda, Attendance, Minutes
 - Extra Ordinary General Meetings Notice, Agenda, Attendance, Minutes
 - Postal Ballot Notice, Agenda, Attendance, Minutes
- (3) Documents relating to Appointment, Resignation removal which includes
 - Appointment of Auditors
 - Appointment of Directors, Independent Directors
 - Appointment of Company Secretary
 - Resignation / Removal of Directors
- (4) Documents relating to Securities including shares, Debentures, Deposit which includes
 - Shareholding Pattern
 - Issue of Securities
 - Buy back of Securities
 - Conversion of Securities
 - Acceptance and payment of Deposits
- (5) Documents relating to Managerial Remuneration
- (6) Documents relating to Registration, Modification and satisfaction of Charges
- (7) Documents relating to related party transactions
- (8) Statement on Transaction with Director and Loan to Directors
- (9) Statutory Register and other Registers
- (10) Disclosures submitted by Directors
- (11) Annual Return, Financial Statement
- (12) Filing of forms with the Registrar and attachment thereof
- (13) Information of the Regulatory action, order, pending cases
- (14) Information of the various filing to stock exchanges

(2) Verification of Compliances under Securities Contracts (Regulation) Act, 1956 and the Rules made thereunder which includes:

1. Capital Structure of the company and Shareholding status

212 PP-SACM&DD

2. Changes its capital structure during the period of Audit
3. Compliance with Conditions of the SEBI (LODR) Regulations, 2015 relation to Listing of Securities.
4. Issues relating to listing of securities /refusal of Listing of Securities by the stock exchange.
5. Status of application if any filed before the central government or the Securities Appellate Tribunal against such refusal.
6. Status of continuous listing requirement with the stock exchange.
7. Status of Contravention of any provisions which may attract the penal provisions provided under Sections 23A to 23H.
8. Immunity availed to the company by Central Government.
9. Grounds for the delisting of Securities by the Stock exchange.

The following are the illustrative Compliances requirement under Securities Contracts (Regulation) Act, 1956 and the Rules made thereunder:

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.
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 against such refusal.
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.
9. Note: To check this, PCS may check the annual report of the company and the shareholding pattern filed by the company with the stock exchange under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
10. 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)
11. Check whether the company has contravened any provisions which may attract the penal provisions provided under Sections 23A to 23H
12. Whether the company has been granted immunity by Central Government. (Section 23 O)
13. 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)
14. Check whether the Company has been delisted by the Stock exchange.

(3) Verification of the Compliances under the Depositories Act, 1996 and the Rules made thereunder which include:

1. Agreement between depository and participant
2. Surrender of certificate of security
3. Registration of transfer of securities with depository
4. Holding of Securities in depositories.
5. Pledge or hypothecation of securities held in a depository
6. Redressal of investors' grievances

The following are the illustrative Compliances requirement under the Depositories Act, 1996

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.
4. 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
5. Check whether there is any contravention which may attract the penal provisions provided under Sections 19A to 19G.
6. Whether the company has been granted immunity by Central Government. (Section 22B)
7. 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)
8. 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).
9. Verification of quarterly audit report submitted to the stock exchange by the company with respect to reconciliation.

(4) Verification of compliances under Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder

The Reserve Bank 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. The Verification of Compliances includes conditions for:

- Permission for making investment by a person resident outside India, including foreign portfolio Investor, NRI or OCI on Repatriation basis/ Non-Repatriation basis etc.

214 PP-SACM&DD

- Purchase and sale of securities other than capital instruments by a person resident outside India
- Investment in a Limited Liability Partnership (LLP)
- Investment by a Foreign Venture Capital Investor (FVCI)
- Investment by a person resident outside India in an Investment Vehicle
- Investment in Depository receipts by a person resident outside India
- Issue of Indian Depository Receipts (IDRs)
- Acquisition through a rights issue or a bonus issue
- Issue of shares under Employees Stock Options Scheme to persons resident outside India
- Issue of Convertible Notes by an Indian startup company
- Merger or demerger or amalgamation of Indian companies
- Transfer of capital instruments of an Indian company by or to a person resident outside India
- Pricing Guidelines
- Reporting requirements Advance Remittance Form, Form Foreign Currency-Gross Provisional Return, Annual Return on Foreign Liabilities and Assets, Form Foreign Currency-Transfer of Shares, Form Employees' Stock Option, Form Depository Receipt Return (, Form LLP, Form Convertible Notes etc.
- Prohibited activities for investment by a person resident outside India.
- Permitted sectors, entry routes and sectorial caps for total foreign investment.

(5) Verification of Compliances under the Regulations and Guidelines prescribed under SEBI Act, 1992

- (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 include the following activities:
 - Direct Acquisition of Shares.
 - Indirect Acquisition of Shares
 - Direct Acquisition of Control.
 - Indirect Acquisition of Control
 - Voluntary offer
 - Pricing
 - Event base, Continual and Annual Disclosures
 - Disclosure of shares encumbered
- (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 include the following activities relating to;
 - Connected Person
 - Communication of UPSI – Investment Due-diligence
 - Restrictions of Trading & Defences
 - Onus of Proof

- Trading plans for Perpetual Insiders
 - Trading plans
 - Disclosures of trading by insiders
 - Continual Disclosures
 - Disclosures by other connected persons
 - Codes of Fair Disclosure and Conduct
- (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 include the following activities relating to:
- Common Conditions for public issue and right issue
 - Provisions as to public issue relating to
 - Eligibility requirement
 - Pricing in public issue
 - Promoter contributions
 - Restriction on transferability (lock in) promoter contribution etc.
 - Minimum offer to public, reservation etc.
 - Application for listing and listing agreement
 - Right Issue
 - Bonus issue
 - Manner of disclosure in the offer documents
 - General obligations of an issuer and intermediaries with respect to public issue and right issue
 - Conditions and manner of providing exit opportunities to dissenting share holder
 - Institutional Placement programme
 - Listing on Institutional Trading Platform
- (d) The Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 include the following activities relating to
- Schemes - Implementation and Process
 - Administration of Specific Schemes
 - Eligibility for participation in scheme
 - Employee Stock Option Scheme (ESOS)
 - Employee Stock Purchase Scheme (ESPS)
 - Stock Appreciation Rights Scheme (SARS)
 - General Employee Benefits Scheme (GEBS)
 - Retirement Benefit Scheme (RBS)
- (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 include the following activities relating to:

- Issue requirement for public issue for debt securities
 - Disclosure in the offer documents
 - Filing of draft offer documents
 - Filing of shelf prospectus
 - Continuing listing conditions
 - Trading of debt securities
- (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 which includes
- To ensure that the Registrar to an Issue does not to act as such for an associates
 - To ensure that the registrar has maintained proper books of accounts and records, etc.
 - To ensure that The registrar to an issue has maintain the following records with respect to:-
 - all the applications received from investors in respect of an issue;
 - all applications of investors rejected and reasons therefor;
 - basis of allotment of securities to the investors as finalised in consultation with the stock exchange;
 - terms and conditions of purchase of securities; allotment of securities;
 - list of names of allottees and non-allottees of the securities;
 - refund orders dispatched to investors in respect of application monies received from them in response to an issue;
 - such other records as may be specified by the Board for carrying on the activities as registrars to an issue.
 - To ensure that the share transfer agent has maintain the following records in respect of a body corporate on whose behalf he is carrying on the activities as share transfer agent namely:-
 - list of holders of securities of such body corporate;
 - the names of transferor and transferee and the dates of transfer of securities;
 - such other records as may be specified by the Board for carrying out the activities as share transfer agents.
- (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; which includes the
- Compulsory delisting
 - Voluntary delisting – where no exit opportunities is required
 - Voluntary delisting – where exit opportunities is given
- (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998, which includes the buy-back of 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.
- (i) The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, which includes the
 - General Compliance relating to
 - Appointment of compliance officer
 - RTA,
 - Rating agency
 - Disclosures
 - Policies
 - Stakeholder grievances
 - Information placed on the Website
 - Corporate Governance Compliances
 - Other Compliances relating to
 - Equity Shares
 - Non-convertible debt securities
 - Non-convertible redeemable Preference Shares
 - Secured debt instrument
 - Mutual fund units

(6) Reporting on the Laws as specifically applicable to the company

According to the Scope of Secretarial Audit the Council of ICSI on specific reference to other laws as may be applicable specifically to the company decided 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.

The illustrative list of the Central, State and Local laws applicable to the various industries are placed on the website of the ICSI, However for the reference of the students the list of the industries which are covered is placed as below:

Agriculture	Civil Aviation
Automobiles	Banking
Auto Components	Education & Training
Cement	Financial Services
Chemical	Healthcare
Construction	IT & ITeS

FMCG	Media and Entertainment
Engineering	Rubber
Food Industry	Shipping
Gems and Jewelry	Power
Steel	Services
Insurance	Ports
Mining	Paper Manufacturing
Oil and Gas	Real Estate
Pharmaceuticals	Retail
Textiles	Telecommunications
Tourism and Hospitality	Transportation / Logistics

(7) Reporting on the compliance of the applicable clauses of Secretarial Standards

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 Companies and Company Secretaries in employment as well as in practice and accordingly the **student are advised to go through the following clauses of the Secretarial Standards issued by ICSI**

Secretarial Standards on Meeting of Board of Directors (SS-1)	Secretarial Standards on General Meeting (SS-2)
1. Convening a meeting	1. Convening a meeting
2. Frequency of meetings	2. Frequency of meetings
3. Quorum	3. Quorum
4. Attendance at meeting	4. Presence of Directors and Auditors
5. Chairman	5. Chairman
6. Passing of resolution by circulations	6. Proxies
7. Minutes	7. Voting
8. Preservation of minutes and other Records	8. Conduct of e voting
9. Disclosure	9. Conduct of poll
	10. Prohibition of Withdrawal of Resolution
	11. Rescinding of resolution
	12. Modification to resolution
	13. Reading of Reports

	14. Distribution of Gifts
	15. Adjournment of meetings
	16. Passing of Resolution by postal ballot
	17. Minutes
	18. Preservation of Minutes and other records
	19. Report on Annual General meeting
	20. Disclosures

(8) Verification relating to Constitution of Board and its Processes

A. Constitution of the Board: Size and Composition

Under the verification of the constitution and composition of the board includes the Compliance relating to the as applicable to the company status i.e. Private or Public and Listed or Unlisted etc:

- Minimum number of directors
- Maximum number of directors
- Optimum combination of executive and non-executive directors
- Appointment of woman director
- Chairperson of the Board
- Independent directors.
- Nominee Director
- Alternate Director
- Fulfilling qualifying criteria for independent director
- Declaration of independence by Independent Director
- Terms and conditions of appointment of Managing Director, Independent Director
- Remuneration to Independent Director
- Sitting fee
- Retire by Rotation of Directors
- Small Shareholder Director
- Removal of Director
- Resignation of Directors

B. Board Processes

Under the verification of the board process the following check points shall be observed by the Secretarial Auditors:

1. 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. 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 write-up 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.
4. The video conferencing is recorded and kept under safe custody
5. That following matters were not dealt through video conferencing or other audio visual means in board meeting:
 - a. the approval of the annual financial statements;
 - b. the approval of the Board's report;
 - c. the approval of the prospectus;
 - d. 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
 - e. the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.
6. 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.
7. 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.
8. 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.
9. 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.
10. That 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 made by the Board of its own performance and that of its committees and individual directors.
11. 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.

12. That 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.
13. That, in case of the listed company, 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.
14. 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.
15. That in case of listed company the all Related Party Transactions had prior approval of the Audit Committee.
16. That the Audit committee has provided, omnibus approval for certain Related Party Transaction, ensure that the transaction are within the criteria of the approval and such approval shall not be provided for a period exceeding one year.
17. That 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.
18. That 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 companies.)
19. That the Board periodically review the systems and processes followed by the company.
20. Whether such systems and processes are adequately commensurate with its size and operations of the company 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.
21. That the board of directors has laid a code of conduct for all members of board of directors and senior management of the company.
22. That the company has received the confirmation of compliance of the code of conduct form the Directors and officers of the company.
23. 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-compliance.
24. That the board has identified and keep a track on the high risk area and critical compliance of the company.
25. That the Company has succession plan for his Key Managerial Personnel and senior officials. If so, whether the Board of the company satisfies with the existing succession plans in place.
26. That the minutes of board/ committee meetings are properly maintained in accordance with the Act.
27. That the company has complied with the Secretarial Standards (SS-1 &SS-2) issued by ICSI.

Board Committee: Composition and Processes

Under the verification of the Board Committee Compositions and Processes the following check points shall be observed by the Secretarial Auditors

1. That the any director 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.

2. That if the company falls under any of the following categories:
 - 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

Confirm that the Board of directors have constituted an Audit Committee and a Nomination and Remuneration Committee of the Board.

3. That the audit committee consists of a minimum of three directors with a majority of independent directors.
4. That In case of listed company Two-third of the total number of members of audit committee shall be independent directors.
5. That the board's report discloses the composition of an audit committee.
6. That the majority of members of Audit Committee including its Chairperson are persons with ability to read and understand the financial statement.
7. That, 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.
8. That, In case of listed company, 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.
9. 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.
10. That if the company falls under any one of the following categories:
 - i. a listed company;
 - ii. a company which accepts deposits from the public;
 - iii. a company which has borrowed money from banks and public financial institutions in excess of fifty crore rupees.

If yes, confirm that the company has constituted vigil mechanism for their directors and employees to report their genuine concerns or grievances.

11. That the terms of reference (in addition to other items) of audit committee ensures overseeing the vigil mechanism of the company.
12. That In case of listed companies, 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.
13. That In case of listed company, the Audit Committee has met at least four times in a year and not more than one hundred days have elapsed between two meetings.

14. That In case of listed company, 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.
15. That any recommendation of the audit committee which is not accepted by the Board is disclosed in the Board's report.
16. That the Nomination and Remuneration Committee consists of at least three or more non-executive directors out of which not less than one-half are independent directors.
17. That the Chairman or a member of the nomination and remuneration committee was present at the Annual General Meeting, to answer the shareholders' queries.
18. That 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 the evaluation criteria of independent directors.
19. That such policy has been placed on the website of the company.
20. That the remuneration to KMPs is as per the remuneration policy framed by the company
21. 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 Board.
22. That the Chairman or a member of the Stakeholders Relationship Committee was present at the Annual General Meeting, to answer the shareholders' queries.
23. 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.
24. 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.
25. 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.
26. That the composition of the all committees are also disclosed in the Board's Report.

(9) Reporting of General Laws

According to the Scope of Secretarial Audit the Council of ICSI on specific reference to other laws as may be applicable to the company decided as under

"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."

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 etc.

1. The General Laws relating to Labour laws includes:

1. Factories Act, 1948
2. Industrial Disputes Act, 1947

224 PP-SACM&DD

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.

Further, India has an elaborate legal framework with number of laws relating to environmental protection. The List of the key national laws on environment protection, list of project require central government approvals and Industries which require industrial placed below:

A. Key Environment Protection Laws

1. Water (Prevention and Control of Pollution) Act, 1974;
2. Water (Prevention and Control of Pollution) Cess Act, 1977;
3. Air (Prevention and Control of Pollution) Act, 1981;
4. Environment (Protection) Act, 1986;
5. The Public Liability Insurance Act, 1991;
6. The Biodiversity Act, 2002;
7. The National Green Tribunal Act, 2010;
8. Hazardous Wastes (Management, Handling and Tran's boundary Movement) Rules, 2008;
9. Plastic Waste Management Rules, 2016;
10. Bio-Medical Waste Management Rules, 2016;
11. Construction and Demolition Waste Management Rules, 2016;
12. E-waste Management Rules, 2016;
13. The Batteries (Management and Handling) Rules, 2001 made under the Act.

B. List of Projects Requiring Environmental Clearance from the Central Government

1. Nuclear Power and related projects such as Heavy Water Plants, Nuclear Fuel Compley, Rare Earths.
2. River valley projects including hydel power, major irrigation and their combination including flood control.

3. Ports, harbours, airports (except minor ports and harbours).
4. Petroleum refineries including crude and product pipelines.
5. Chemical fertilizers (nitrogenous and phosphatic other than single super phosphate).
6. Pesticides (Technical).
7. 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.
8. Bulk drugs and pharmaceuticals.
9. Exploration for oil and gas and their production, transportation and storage.
10. Synthetic rubber.
11. Asbestos and asbestos products.
12. 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).
13. Chloralkali industry.
14. Integrated paint complex including manufacture of resins and basic raw materials required in the manufacture of paints.
15. Viscose staple fiber and filament yam.
16. Storage batteries integrated with manufacture of oxides of lead and lead antimony alloys.
17. All tourism projects between 200-500 meters of High Water Line and at locations with an elevation of more than 1,000 meters with investment of more than Rs. 5 crores.
18. Thermal Power Plants.
19. Mining Projects (major minerals) with leases more than 5 hectares.
20. Highway Projects.
21. Tarred roads in Himalayan and or Forest areas.
22. Distilleries.
23. Raw Skins and Hides.
24. Pulp, Paper and Newsprint
25. Dyes.
26. Cement.
27. Foundries (individual).
28. Electroplating.
29. Meta amino phenol

C. Industries which require Industrial Licensing

1. Coal and Lignite
2. Petroleum (other than crude) and its distillation products.
3. Distillation and brewing of alcoholic drinks.

4. Sugar
5. Animal fats and oils and their preparations
6. Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
7. Asbestos and asbestos-based products.
8. Plywood, decorative veneers and other wood based products such as particle board, medium density fibre board, and block board.
9. Leather
10. Tanned or dressed fur skins.
11. 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).
12. Electronic aerospace and defence equipment all types.
13. Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches, explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations.
14. Drugs and Pharmaceuticals (according to Drug Policy)
15. Entertainment electronics (VCRS, colour TVs, CD players, tape recorders).

Further, the following is the List of Polluting Industries where in the secretarial Auditor should consider the environmental laws as the sector specific Laws:

1. Primary metallurgical producing industries viz...Zinc, lead, copper, aluminum and steel.
2. Paper, pulp and newsprint.
3. Pesticides / insecticides.
4. Refineries.
5. Fertilizers.
6. Paints.
7. Dyes.
8. Leather tanning.
9. Rayon.
10. Sodium / potassium cyanide.
11. Basic drugs.
12. Foundry.
13. Storage Batteries (lead acid type).
14. Acids / alkalies.
15. Plastics.
16. Rubber - synthetic.
17. Cement.
18. Asbestos.

19. Fermentation industry.
20. Electroplating industry.

(10) Reporting of Specific Event under Secretarial Audit Report

The Secretarial Auditor should 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
- Capacity expansion and utilization of the company
- Sale/ Disposing of the substantial assets of the company
- Entering in to Joint ventures agreements etc.

(11) 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.

Guiding Principles of Good Corporate Conduct and Practices

Every company should make disclosures and abide by its obligations in accordance with the following principles:

- (a) All Information relating to the company should be prepared and disclosed in accordance with applicable standards of accounting and financial and Non –financial disclosure.
- (b) The company should implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
- (c) The Company should refrain from misrepresentation and ensure that the information provided to investors is not misleading.
- (d) The Company should provide adequate and timely information to investors.
- (e) The Company should ensure that disseminations of information made are adequate, accurate, explicit and timely and presented in a simple language.
- (f) The Channels for disseminating information should provide for equal, timely and cost efficient access to relevant information by investors.
- (g) The Company shall abide by all the provisions of the applicable laws including the Corporate laws, securities laws and also such other guidelines as may be issued from time to time by the Regulators.
- (h) The company should make disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.
- (i) Filings, reports, statements, documents and information which are event based or are prepared periodically should contain relevant information to enable investors to track the performance of the company

- (j) The Company should respect the rights of stakeholders that are established by law or through mutual agreements.
- (k) To Company should provide opportunity to Stakeholders to obtain effective redress for violation of their rights.
- (l) Stakeholders should have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process.
- (m) The Company should devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.
- (n) The Company should ensure that timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the company, in the following manner:
 - (i) Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.
 - (ii) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.
 - (iii) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.
- (o) Members of board of directors and key managerial personnel should disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the Company.
- (p) The board of directors and senior management should conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision - making.
- (q) The Board of the company should effectively -
 1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.
 2. Monitoring the effectiveness of the Company's governance practices and making changes as needed.
 3. Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.
 4. Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the Company and its shareholders.
 5. Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.
 6. Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.
 7. Ensuring the integrity of the Company's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

8. Overseeing the process of disclosure and communications.
 9. Monitoring and reviewing board of director's evaluation framework.
- (r) The board of directors should provide strategic guidance to the Company, ensure effective monitoring of the management and shall be accountable to the Company and the shareholders.
 - (s) The board of directors should set a corporate culture and the values by which executives throughout a group shall behave.
 - (t) Members of the board of directors should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the Company and the shareholders.
 - (u) The board of directors should encourage continuing directors training to ensure that the members of board of directors are kept up to date.
 - (v) Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.
 - (w) The board of directors should maintain high ethical standards and should take into account the interests of stakeholders.
 - (x) The board of directors should exercise objective independent judgment on corporate affairs.
 - (y) The board of directors should consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgment to tasks where there is a potential for conflict of interest.
 - (z) The board of directors should ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the Company to excessive risk.
 - (aa) The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the Company focus.
 - (bb) When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.
 - (cc) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.
 - (dd) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.
 - (ee) The board of directors and senior management should facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.

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 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.

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.:

LESSON ROUND UP

- Secretarial Audit is an independent and objective assurance intended to add value and improve operations of a company.
- Only a member of the Institute of Company Secretaries of India holding certificate of practice can conduct Secretarial Audit and furnish the Secretarial Audit Report to the company.
- Secretarial Audit is an audit to check compliance of various legislations including the Companies Act and other corporate and economic laws applicable to the company.

- Proactive Secretarial Audit on a continuous basis would help the company in initiating corrective measures and strengthening its compliance mechanism and processes. It is therefore, advisable that the Secretarial Audit is carried out periodically (quarterly / half year / annually) and adverse finding if any, is reported on interim basis to the Board immediately.
- The Secretarial Audit Report should be signed by the Secretarial Auditor who has been engaged by the company to conduct the Secretarial Audit and in case of a firm of Company Secretaries, by the partner under whose supervision the Secretarial Audit was conducted.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Enumerate the process of conducting Secretarial Audit.
2. Describe the Scope of Secretarial Audit under section 204 of the Companies Act, 2013
3. Define the Guiding criteria for the verification of Compliances under the Companies Act, 2013.
4. While conducting Secretarial Audit, what factors need to be considered for reporting of the General Laws?
5. Describe the principals of the good Corporate Conduct which shall be observed by the Directors of the company.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Lesson 10

Internal Audit and Performance Audit

LESSON OUTLINE

- Introduction
- Internal Audit under the Companies Act, 2013
- Appointment of Internal Auditor
- Objective of Internal Audit
- Scope on Internal Audit
- Internal Audit Core principles
- Independence of Internal Auditor
- Internal Audit Techniques
- Role of Internal auditor in organisation Control mechanism
- Appraisal of Management Decisions
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Internal Audit is a mechanism to provide an independent and objective assessment of the effectiveness and efficiency of a company's operations, specifically its internal control structure. The function of internal audit helps an organization to accomplish its objectives by bringing systematic and disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. The scope of internal auditing is broad and includes the efficiency of internal control, operations, IT controls, the reliability of financial reporting, deterring and detecting fraud and compliance with laws and regulations. This varied service requires systematic expertise and specialization in conducting internal audit.

Today, Company Secretary plays a pro-active and central role in the governance of the company. The Company Secretary guides the directors in their pursuit of profit and growth and acts with integrity and independence to safeguard the interest of various stakeholders.

INTRODUCTION

Historically, internal auditing was confined to ensure that, the accounting and allied records have been properly maintained, the assets of the organization have been properly safeguarded and that the policies and procedures laid down by the management have been complied with. Post liberalization of economy, the growth and expansion made it increasingly difficult for organizations to maintain control and operational efficiency. The economic conditions further expanded organizations' responsibilities for scheduling, managing with limited materials and labourers, complying with government regulations, and an increased emphasis on cost efficiency. It was difficult for management to observe all the operating areas or be in touch with everybody. This requires companies to appointed auditing personnel for report on affairs of the company, which are known as 'Internal Auditors'.

The operations of the Companies which have huge and sophisticated business structure and have decentralization of their business activities among the various functional heads and division or wherein the top management is remotely concerned with the day-to-day activities of the concern. Now a day, the role of internal auditing has a great significance in the performance of the company.

With the changes in the economic conditions, now the scope of internal auditing is not confined to financial transactions it is extended up to the minuet activity of the company, which may or may not be the cost center but have an impact on the efficiency on the company.

DEFINITION OF INTERNAL AUDIT

As defined by the Institute of Internal Auditors (IIA)

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

Independence is established by the organizational and reporting structure. Objectivity is achieved by an appropriate mind-set. The internal audit activity evaluates risk exposures relating to the organization's governance, operations and information systems, in relation to:

1. Effectiveness and efficiency of operations.
2. Reliability and integrity of financial and operational information.
3. Safeguarding of assets.
4. Compliance with laws, regulations, and contracts.

Based on the results of the risk assessment, the internal auditors evaluate the adequacy and effectiveness of how risks are identified and managed in the above areas. They also assess other aspects such as ethics and values within the organization, performance management, communication of risk and control information within the organization in order to facilitate a good governance process. An effective internal audit activity is a valuable resource for management and the board and the audit committee due to its understanding of the organization and its culture, operations, and risk profile. The objectivity, skills, and knowledge of competent internal auditors can significantly add value to an organization's internal control, risk management, and governance processes. Similarly an effective internal audit activity can provide assurance to other stakeholders such as regulators, employees, providers of finance, and shareholders.

INTERNAL AUDIT UNDER THE COMPANIES ACT, 2013

The concept of the internal audit has been recognized as a statutory exercise under Section 138 of the

Companies Act, 2013, and has been made mandatory. As per Rule 13 of Companies (Accounts) Rule, 2014, the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

- (a) every listed company;
- (b) every unlisted public company having-
 - (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or
 - (ii) turnover of two hundred crore rupees or more during the preceding financial year; or
 - (iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
 - (iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
- (c) every private company having-
 - (i) turnover of two hundred crore rupees or more during the preceding financial year; or
 - (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year:

It may be noted that the internal auditor may or may not be an employee of the company and it is not mandatory for the professionals like company secretaries, chartered accountant or cost accountant should be in practice, he may or may not be engaged in the practice of such profession.

Further the audit committee of the company or the board shall, in consultation with the internal auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

The act does not prescribes any specific time frame for conducting internal audit but it is considered a good practice to conduct the audit on a quarterly basis so that the compliances are monitored properly and there are no frauds or deviations in the company.

Internal Audit is performed by professionals with an in-depth understanding of the business culture, systems, and processes. Internal audit activity provides assurance that internal controls in place are adequate to mitigate the risks, governance processes are effective and efficient, and organizational goals and objectives are met.

APPOINTMENT OF INTERNAL AUDITOR

Section 179 read with Rule 8 (4) of the Companies (Meeting of the Board and its Power), Rules 2014 provide that the appointment of the internal auditors shall be done only through a resolutions passed by the board of directors at the meetings of the board.

Also, the resolution for appointment of the internal auditor shall be filed with the Registrar of Companies within 30 days from the passing of the said resolution pursuant to the provisions of Section 117 & 179 of the Companies Act, 2013.

Hence, it could be very well interpreted that the appointment of internal auditor can be made only at the meeting of the board and whenever an internal auditor is appointed in a company, the resolution should be filed with the concerned Registrar of Companies vide e-Form MGT-14 within 30 days from the date of passing of the said resolution. In case of Private Companies, an exemption has been granted from filing of e-Form MGT-14, for resolution passed in pursuance of sub- section (3) of section 179 of the Companies Act 2013, vide notification issued by the Ministry of Corporate Affairs dated 5th June, 2015.

Terms of reference

The overall scope of internal audit should be formalized in terms of reference; it is often referred to as an audit manual, and approved by the board, normally through the audit committee. These should then be communicated to the functional heads within the organisation. Internal audit's terms of reference or manual should provide clarity about its:

- Strategy and objectives;
- Role and responsibilities within the organisation;
- Scope of work;
- Accountability to the audit committee;
- Reporting lines for line management purposes;
- Accessibility to the board and the audit committee; and
- Unfettered access to all information, people and records across the organisation.

The terms of reference should make it clear that internal audit should not be put in a position where it has to review its own work.

OBJECTIVE OF INTERNAL AUDIT

The main objective of the internal audit process is to provide an assurance on the organisation's risk management, internal control environment and governance framework through review and appraisal of:

- (a) Operational control framework including fundamental and basic systems in all areas of the business. The adequacy of risk identification, assessment and mitigation in the organisation. This shall include fraud risks.
- (b) Extent, adequacy, relevance of, and compliance with existing policy, plans and procedure documents within the organisation.
- (c) The extent of compliance with relevant statutory requirements.
- (d) Status of implementation of internal / external audit recommendations.
- (e) Evaluating internal control. Internal control is broadly defined as a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of the following core objectives for which all businesses strive:
 - Effectiveness and efficiency of operations;
 - Reliability of financial and management reporting;
 - Compliance with laws and regulations;
 - Accomplishment of established goals for operations;
 - Safeguarding of assets.
- (f) Determines the risk area of the organisation.
- (g) Establishes the risk management framework.
- (h) Identifies potential threats and assesses risks.
- (i) Decides on response to risks like implementation of control.
- (j) Monitors and coordinates the risk management processes and the outcomes.
- (k) Provides assurance on the effectiveness of risk management processes.

SCOPE OF INTERNAL AUDIT

The Institute of Internal Auditors defines scope of internal auditing as 'The examination and evaluation of the adequacy and effectiveness of organization's system of internal control and the quality of actual performance'

Accordingly, the internal audit is concerned with an evaluation of both internal control as well as the quality of actual performance. According to The Institute of Internal Auditors, internal audit involves the following areas of operations, which can be discussed as follows:

1. Review of Internal Control Systems and Procedures

The internal auditor should determine whether the internal control system is in consonance with the organizational structure. As far as possible, control should be built in the operating functions, if they are cost effective.

For example, the establishment of a separate credit control department would be justified if the objective of reducing the credit risk and minimizing debt recovery period could be met through controls in-built in the accounting and sales systems especially in small and medium size concerns.

Each control should be reviewed and analysed in terms of its costs and benefits. It should also be seen whether the internal controls were in use throughout the period of intended reliance. A breakdown in internal controls for a specific portion of the intended reliance would need specific attention.

2. Reliability and Integrity of Financial and Operating Information

The internal auditor should review the information systems to evaluate the reliability and integrity of financial and operating information given to management and to external agencies such as governmental bodies, trade organisations and labour unions. For the purpose the internal auditor should review the means used for measuring, classifying and reporting information including the records from which the information is extracted. He should examine the accuracy and reliability of financial and operational records. He should review the frequency and timeliness of the reports keeping in view the statutory time limits in the case of reports to government agencies. He should examine the information mentioned in the report is meaningful to the user. The usefulness of the report and the records should be evaluated with reference to their costs. The internal auditor should examine whether the reporting is by exception i.e. the reports highlight the significant and distinctive features.

Internal Auditors should review the reliability and integrity of financial and operating information and the means used to identify, measure, classify and report such information.

3. Economical and Efficient Use of Resources

The internal auditor should check whether proper operating standards and norms have been established for measuring economical and efficient use of resources. They should be detailed enough to be identifiable with specific operating responsibilities and should be capable of being used by operating personnel for monitoring and evaluating their performance. The internal auditor should review the methods of establishing the operating standards and norms. He should carefully examine the assumptions made while setting the standards to ensure that they are appropriate and necessary. The variances should be examined to evaluate whether or not the standards and norms are practical. Where there is a wide divergence between actual performance and the corresponding standards, reasons may be looked into. The system of identification and analysis of deviations from standards should be examined. The internal auditor should examine whether analysis of variances is communicated to those concerned in time. He should also examine whether in communicating the variances serious matters are highlighted and whether exceptional variances are communicated more expeditiously than is done in the normal course. As a part of evaluating resources utilization, identifying the facilities which are under-utilized is an important function of the internal auditor. Such instances may consist of under-utilized machines, unoccupied storage space, huge cash or bank balances, idle man power etc. The internal auditor may also identify under-staffing and overstaffing in various areas as these prevent optimum use of resources.

While commenting on staffing, the internal auditor should pay special attention to non-productive work being performed. This would require an enquiry into the job descriptions of employees combined with an intelligent observation of the work being done. Finally the internal auditor should review all procedures with reference to their costs and benefits. One of the factors resulting in inefficiency is that in many cases procedures become hindrance to operations.

4. Compliance with Laws, Policies, Plans, Procedures, and Regulations

It is essential that the various functional segments of an enterprise comply with the relevant policies, plans, procedures, laws and regulations so that the operations are carried out in coordinated manner. The internal auditor should examine whether the management has a system by which its policies, plans and procedures are communicated to all concerned. He should examine whether management formulates the major accounting policies after due regard to their effect on the financial statements both present and future. He should also examine the system of periodical review of existing policies particularly when there is a change in the method and nature of operations of the enterprise. By combining the results of his review of the adequacy of the systems with the result of his compliance tests, the internal auditor should be able to evaluate the effectiveness of the former. He should point out specific weaknesses and suggest remedial action.

Internal Auditor should review the systems established to ensure compliance with those policies, plans and procedures, law and regulations which could have a significant impact on operations and should determine whether the organization is in compliance thereof.

5. Review of Organizational Structure

The internal auditor should conduct an appraisal of the organisation structure to ascertain whether it is in harmony with the objectives of the enterprise and whether the assignment of responsibilities is in consonance therewith. For this purpose he should review the manner in which the activities of the enterprise are grouped for managerial control. It is also important to review whether responsibility and authority are in harmony with the grouping pattern. The internal auditor should examine the organisation chart to find out whether the structure is simple and economical and that no function enjoys an undue dominance over the others. He should see whether the lines of authority and responsibility are clearly defined and communicated to all the organisational levels. He should particularly see that the responsibilities of managerial staff at headquarters do not overlap with those of chief executives at operating units. This situation often results in organisational chaos. He should examine whether there is a satisfactory balance between authority and responsibility of important executives i.e., the authority of each executive should be commensurate with the responsibility assigned to him. This can be evaluated by discussing the problems of operations and implementation with various executives. The internal auditor should examine the reasonableness of the span of control of each executive (the number of sub-ordinates that an executive controls). There should be a proper balance between the span of control of different executives at different levels. He should examine whether there is a unity of command i.e., whether each person reports only to one superior. Where dual responsibilities cannot be avoided, the primary one should be specified and the specific responsibility to each senior fixed. This must be made known to all concerned. He should examine whether there is a sufficient flexibility in the day to day working of the organisation and that initiative is not being stifled by a strict adherence to rules. One way of reducing organizational rigidity without sacrificing control is to have a quick and free flow of information within the enterprise. Finally he should evaluate the process of managerial development in the enterprise. This is a vital aspect in a fast growing enterprise. Unless executives are properly groomed to take over positions of responsibilities when senior people retire, there is bound to be organizational chaos.

6. Accomplishment of Established Goals for Operations

The internal auditor should review the overall objectives of the enterprise to evaluate whether they are clearly stated and are attainable. The translation of such overall objectives into specific objectives for each department

and programme should be reviewed. It should be examined whether the objectives are revised periodically in the light of changes in internal and external environment. The internal auditor should examine whether to the extent possible, objectives are expressed in precise quantifiable terms (both monetary and non-monetary) to facilitate detailed planning and execution. Budgeting forms an important part of such planning. Line managers who are to implement the plans should fully participate in framing them. This will ensure that plans anticipate the problem areas. There should also be sufficient flexibility in the plans to permit such improvements in their implementation, as would benefit the enterprises as a whole. The responsibility for achieving specific facets of a plan should be clearly identified with the concerned person or department. Apart from these, the internal auditor should examine whether departmental plans are supported by top management. The departmental plan summaries should be sent to concerned managers. These should be discussed and communicated at meetings at which all managers participate.

Internal Auditor should review operations and programmes to ascertain whether results are consistent with established objectives and goals and whether the operations or programmes are being carried out as planned.

7. Review of Custodianship and Safeguarding of Assets

The Internal Auditor should verify the existence of the assets and also review the control system to ensure that all assets are accounted fully. He should review the means used for safeguarding assets against losses e.g. fire, improper or negligent activity, theft and illegal acts etc. He should review the control systems for intangible assets e.g. the procedures relating to credit control. Where an enterprise uses electronic data processing equipment, the physical and systems control on processing facilities as well as on data storage should be examined. He should also review the adequacy of the insurance cover for the various risks involved.

INTERNAL AUDIT CORE PRINCIPLES

As per the Institute of Internal Auditors (IIA), core principles of Internal Audit hovers around the performance of effective internal auditing and all of them must be present and working well. How an internal auditor, as well as an internal audit function, demonstrate achievement of the core principles may be quite different from organisation-to-organisation. But, failure to achieve any of the core principles implies that an internal audit activity is not as effective as it could be in achieving internal audit's mission. Core principles of internal audit are:

1. Demonstrates integrity.
2. Demonstrates competence and due professional care.
3. Independent and objective exercise.
4. Aligns with the strategies, objectives, and risks of the organisation.
5. Is appropriately positioned and adequately resourced.
6. Demonstrates quality and continuous improvement.
7. Communicates effectively.
8. Provides risk-based assurance.
9. Insightful, proactive, and future-focused.
10. Promotes organisational improvement.

INDEPENDENCE OF INTERNAL AUDITOR

Internal auditing, being an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations, the concept of independence is equally relevant for the internal auditor. As mentioned above, under the statutory provisions of Companies Act, 2013, internal auditor may

or may not be an employee of the company, but he evaluates the functioning of the management at different levels. Therefore, to be efficient and effective, the internal auditor must have adequate independence. It may be noted that by its very nature, the internal audit function cannot be expected to have the same degree of independence as is essential when the external auditor expresses his opinion on the financial information. To ensure his independence he is made responsible directly to the board of directors through audit committee. Such a channel of communication provides an independent mode whereby an internal auditor can communicate and share his views on the scope of internal audit, findings, etc. If internal auditor is made subordinate to lower level management, his independence will be effected which will affect his functioning and effectiveness. An outsider, like a chartered accountant or a company secretary or a firm of chartered accountants or a firm of company secretaries, if acting as internal auditor, is likely to be more independent than an employee of the organization.

INTERNAL AUDIT TECHNIQUES

An internal auditor uses internal audit tools/techniques to ensure that controls, processes and policies are adequate and effective, and that they adhere to industry practices and regulatory mandates. The techniques which are often used by an internal auditor are discussed herein.

(a) Review of Operating Environment

For carrying out the audit effectively, it is necessary for an internal auditor to understand how the company operates. He determines it by referring to departmental employees, external auditors report, and risk specialists. A firm's operating environment describes management's ethical qualities, leadership style and business practices. An internal auditor also could determine how a corporation operates by evaluating industry trends and regulations.

(b) Review Controls

An internal auditor determines how a company's segment or departmental controls operate by reading prior audit reports or working papers and by inquiring from segment employees who perform such controls on a regular basis. An auditor applies generally accepted auditing standards (GAAS) to detect mechanisms, procedures, tools and methodologies that build controls.

(c) Test Controls

An internal auditor tests a business organization's controls, policies and guidelines to ensure that such controls are adequately designed and are operating effectively. Controls are mechanisms and methodologies a corporation's management puts into place to prevent losses due to error, fraud, theft or breaks in technology systems. Effective controls remedy deficiencies and problems properly. Controls are adequate if they provide detailed step-by-step procedures and guidelines for task performance, decision-making processes and lines of hierarchy.

(d) Account Details

An internal auditor performs tests of account details to ensure that financial statements of a business entity are not "materially misstated." tests of account details and account balances are referred to as substantive tests. An auditor conducts such tests if a firm's controls and processes are not adequate or not functioning properly. "Material" means significant or substantial in accounting and audit parlance; a misstatement could result from human errors, intentional fraud or technology system weaknesses.

The above list is not exhaustive and other techniques may also be used by an internal auditor in the internal audit exercise.

INTERNAL AUDIT PROCESS: STEP WISE APPROACH

1. Establish and communicate the scope and objectives for the audit to appropriate management.
2. Develop an understanding of the business area under review. This includes objectives, measurements and key transaction types. This involves review of documents and interviews. Flow charts and narratives may be created if necessary.
3. Describe the key risks facing the business activities within the scope of the audit.
4. Identify control procedures used to ensure each key risk and transaction type is properly controlled and monitored.
5. Develop and execute a risk-based sampling and testing approach to determine whether the most important controls are operating as intended.
6. Report issues and challenges identified and negotiate action plans and solutions with management to address the problems.
7. Follow-up on reported findings at appropriate intervals. Internal audit departments maintain a follow-up database for this purpose.

EVALUATION OF INTERNAL AUDIT FUNCTION BY AN AUDITOR

During the performance of the Secretarial Audit, the secretarial auditor also needs to report on the adequacy of systems and process in the company. The internal audit function greatly assist the Secretarial auditor in determining the extent to which he can place reliance upon the work of the internal auditor. The Secretarial auditor should document his evaluation and conclusions in this respect. The important aspects to be considered in this context are:

1. **Organisational Status** - Whether internal audit is undertaken by an outside agency or by an internal audit department within the entity itself. The internal auditor reports to the management, in an ideal situation he reports to the highest level of management and is free of any other operating responsibility. Any constraints or restrictions placed upon his work by management should be carefully evaluated. In particular, the internal auditor should be free to communicate fully with the external auditor.
2. **Scope of Audit Function** - The external auditor should ascertain the nature and depth of coverage of the assignment which the internal auditor discharges for management. He should also ascertain to what extent the management considers, and where appropriate acts upon internal audit recommendations.
3. **Technical Competence** - The external auditor should ascertain that internal audit work is performed by persons having adequate technical training and proficiency. This may be accomplished by reviewing the experience and professional qualifications of the persons undertaking the internal audit work.
4. **Due Professional Care** - The external auditor should ascertain whether internal audit work appears to be properly planned, supervised, reviewed and documented. An example of the exercise of due professional care by the internal auditor is the existence of adequate audit manuals, audit programmes and working papers.
5. **Monitoring of internal control:** The internal audit function may be assigned specific responsibility for reviewing controls, monitoring their operation and recommending improvements thereto.
6. **Examination of financial and operating information:** The internal audit function may be assigned to review the means used to identify, measure, classify and report financial and operating information, and to make specific inquiry into individual items, including detailed testing of transactions, balances and procedures.

7. **Review of operating activities:** The internal audit function may be assigned to review the economy, efficiency and effectiveness of operating activities, including non- financial activities of an entity.
8. **Review of compliance with laws and regulations:** The internal audit function may be assigned to review compliance with laws, regulations and other external requirements, and with management policies and directives and other internal requirements.
9. **Risk management:** The internal audit function may assist the organization by identifying and evaluating significant exposures to risk and contributing to the improvement of risk management and control systems.
- 10 **Governance:** The internal audit function may assess the governance process in its accomplishment of objectives on ethics and values, performance management and accountability, communicating risk and control information to appropriate areas of the organization and effectiveness of communication among those charged with governance, external and internal auditors, and management.

ROLE OF INTERNAL AUDIT IN ORGANIZATION CONTROL MECHANISM

1. Internal Control

The internal control may be defined as “The process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement of an entity’s objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, safeguarding of assets, and compliance with applicable laws and regulations. The term “controls” refers to any aspects of one or more of the components of internal control.

Objectives

- (i) To ensure that the transactions are executed in accordance with management’s general or specific authorization;
- (ii) To make sure that all the transactions are promptly recorded in the correct amount in the appropriate accounts and in the accounting period in which executed, so as to permit preparation of financial information within a framework of recognized accounting policies and practices and relevant statutory requirements, if any, and to maintain accountability for assets;
- (iii) To ensure assets are safeguarded from unauthorised access, use or disposition; and
- (iv) To make sure that appropriate action is taken with regard to any differences between the recorded assets are compared with the existing assets at reasonable intervals.

Internal Control Mechanism

Internal Audit is a vital constituent of internal control mechanism. It is important to constitute and maintain an audit committee that shall provide assistance to the board of directors in fulfilling their oversight responsibility to the shareholders relating to:

- (a) The integrity of the financial statements and the financial reporting process and principles;
- (b) Internal controls;
- (c) The qualifications, independence, remuneration, and performance of the independent auditors;
- (d) Staffing, focus, scope, performance, and effectiveness of the internal audit function;
- (e) Risk management; and
- (f) Compliance with legal, regulatory, and corporate governance requirements.

The board defines clearly the roles and responsibilities of the audit committee. Management however, has primary responsibility for financial statements and reporting process, internal controls, legal and regulatory compliance and risk management

The internal auditor should examine and contribute to the ongoing effectiveness of the internal control system through evaluation and recommendations. However, the internal auditor is not vested with management's primary responsibility for designing, implementing, maintaining and documenting internal control. Internal audit functions add value to an organization's internal control system by bringing a systematic, disciplined approach to the evaluation of risk and by making recommendations to strengthen the effectiveness of risk management efforts.

The internal auditor should focus towards improving the internal control structure and promoting better corporate governance. The role of the internal auditor encompasses:

- Evaluation of the efficiency and effectiveness of controls
- Recommending new controls where needed or discontinuing unnecessary controls
- Using control frameworks
- Developing Control self-assessment

2. Risk management

Internal auditing professional standards require the function to monitor and evaluate the effectiveness of the organization's Risk management processes. Risk management relating to an organization objectives, and identification, analysis, and response to those risks that could potentially impact its ability to realize its objectives.

Generally, the risks fall under strategic, operational, financial reporting, and legal/regulatory categories. Management performs risk assessment activities as part of the ordinary course of business in each of these categories. Examples include: strategic planning, marketing planning, capital planning, budgeting, hedging, incentive payout structure, and credit/lending practices. The finance department access the risk relating to account preparation, financial reporting and disclosures, corporate legal adviser often prepares comprehensive assessments of the current and potential litigation a company faces. Internal auditors may evaluate each of these activities, or focus on the processes used by management to report and monitor the risks identified. For example, internal auditors can advise management regarding the reporting of forward-looking operating measures to the board, to help identify emerging risks.

3. Corporate Governance

Internal auditing activity as it relates to corporate governance is generally informal, accomplished primarily through participation in meetings and discussions with members of the board of directors. Corporate governance is a combination of processes and organizational structures implemented by the board of directors to inform, direct, manage, and monitor the organization's resources, strategies and policies towards the achievement of the organizations objectives. The internal auditor is often considered one of the "four pillars" of corporate governance, the other pillars being the board of directors, management, and the external auditor.

A primary focus area of internal auditing as it relates to corporate governance is helping the audit committee of the board of directors (or equivalent) perform its responsibilities effectively. This may include reporting critical internal control problems, informing the committee privately on the capabilities of key managers, suggesting questions or topics for the audit committee's meeting agendas, and coordinating carefully with the external auditor and management to ensure the committee receives effective information.

APPRAISAL OF MANAGEMENT DECISIONS

The management for the company owns the responsibility for establishing and maintaining a system of internal controls within an organization. Internal controls are those structures, activities, processes, and systems which help management effectively mitigate the risks to an organization's achievement of objectives. Management is charged with this responsibility on behalf of the organization's stakeholders and is held accountable for this responsibility by an oversight body (e.g. board of directors, audit committee, elected representatives).

A dedicated, independent and effective internal audit activity assists both management and the oversight body (e.g. the board, audit committee) in fulfilling their responsibilities by bringing a systematic disciplined approach to assessing the effectiveness of the design and execution of the system of internal controls and risk management processes. The objective assessment of internal controls and risk management processes by the internal audit activity provides management, the oversight body, and external stakeholders with independent assurance that the organization's risks have been appropriately mitigated. Because, internal auditors are experts in understanding organizational risks and internal controls available to mitigate these risks, they assist management in understanding these topics and provide recommendations for improvements.

Beside above, internal audit has become an important management tool for the following reasons:

1. Internal auditing is a specialized service to look into the standards of efficiency of business operation.
2. Internal auditing can evaluate various problems independently in terms of overall management control and suggest improvement.
3. Internal audit's independent appraisal and review can ensure the reliability and promptness of MIS and the management reporting on the basis of which the top management can take firm decisions.
4. Internal audit system makes sure the internal control system including accounting control system in an organization is effective.
5. Internal audit ensures the adequacy, reliability and accuracy of financial and operational data by conducting appraisal and review from an independent angle.
6. Internal audit is an integral part of "management by system".
7. Internal audit can break through the power ego and personality factors and possible conflicts of interest within the organization.
8. It ensures compliance of accounting procedures and accounting policies.
9. Internal auditor can be of valuable assistance to management in acquiring new business, in promoting new products and in launching new projects for expansion or diversification of business.

The main objective of appraisal of management decision is to see how decisions are taken by the management:

- Whether the decisions are taken after following the decision making process.
- Whether such decisions meeting the organisation objectives.
- Whether such decisions are documented in a fair manner.

Steps in Appraisal of Management Decision

In appraisal of management decision the following step should be considered by the auditor:

1. Whether the management decision are well defined or not.
2. Whether the Objectives and desired output has been set out clearly and relate explicitly with the policy or strategy adopted by the company to help in post event evaluation of the management decisions. Ideally the objectives of the every management decision should be specific, measurable, agreed, realistic and time-dependent.

3. While taking decision, whether the management has considered the effect of the associated risk; time availability; scale and location; scope for alternative arrangements with other public bodies; degree of involvement of regulators and civic bodies; capacity of the market to deliver the required output; alternative asset uses; use of new or established technology; and environmental issues.
4. In case of the major investment decision, whether the various possible options were considered.
5. Whether such potential options are analyzed reviewed in terms of value, costs, benefits, risk and uncertainties of options.
6. Whether the options are selected after due analysis and a consensus decision is taken after a manager has analyzed all the alternatives,
7. Whether the selected alternative implemented efficiently.
8. Ongoing review of management decision control and evaluation system actions need to be monitored.

LESSON ROUND UP

- Internal Audit is performed by professionals with an in-depth understanding of the business culture, systems, and processes. Internal audit activity provides assurance that internal controls in place are adequate to mitigate the risks, governance processes are effective and efficient, and organizational goals and objectives are met.
- There are various techniques of internal audit including Review of Operating Environment, review of controls, test controls, accounts details.
- The work of internal auditor and statutory auditor is interlinked. In his report, statutory auditor needs to comment on the adequacy of internal control system and internal audit. In many case, internal auditor is also required to refer the statutory auditor report.
- Internal audit and statutory audit differs with each other in terms of the scope, responsibilities, terms of reference etc.
- Internal audit play a very important role in risk management, corporate governance and internal control.
- He is who examine and contribute to the ongoing effectiveness of the internal control system through evaluation and recommendations.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Explain internal audit and its, objectives and scope.
2. What are the different techniques of internal audit?
3. How is the internal audit carried out? Explain stepwise approach.
4. What are the advantages and limitations of Internal Audit?
5. Difference between statutory audit and internal audit.
6. Explain the role of internal audit in corporate governance, risk management and internal control
7. What is Internal Control and its objectives and mechanism?
8. State the limitations of internal control.

Lesson 11

Concepts and Principles of Other Audits

LESSON OUTLINE

- Introduction
- Corporate Governance Audit
- CSR Audit
- Takeover Audit
- Insider Trading Audit
- Industrial and Labour Laws Audit
- Cyber Audit
- Environment Audit
- Systems Audit
- Forensic Audit
- Social Audit
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The Company Secretaries being multi-disciplinary professional also renders the Auditing services in the various fields including financial as well as non-financial audits.

Under the various legislations, the Company Secretaries are recognized for conducting audit. However, in case of other audits the Company Secretaries voluntarily explore the auditing opportunities for them.

After reading this chapter, the student will understand the requirement of the various audit and the details of the coverage in each type of Audit.

INTRODUCTION TO VARIOUS AUDIT

Audit is an independent and systematic examination of statutory records, books of accounts, documents and vouchers of an organization. This mainly performed or conducted to ascertain how far the financial statements as well as non-financial disclosures present a true and fair view of the concern. Audit provides and significant assurance to the management and other stakeholders on the affairs of the company. The Auditor while conducting audit obtains evidence and formulates an opinion on the basis of his judgment which is communicated through their audit report.

As an independent professional, auditor provides third party assurance on every subject matter for which he has been engaged. This chapter contains the other areas which are commonly audited by the company secretaries such as Corporate Governance Audit, CSR Audit, Takeover Audit, Insider Trading Audit, Industrial and Labour Laws Audit, Cyber Audit, Environment Audit, Systems Audit Forensic Audit, Social Audit etc.

The above audits are considered as the emerging areas for the company secretaries and with the expertise in these areas, the company secretaries has prove themselves competent professional for conducting such audits. The detailed principles of the various audits are elaborated in this chapter.

1. CORPORATE GOVERNANCE AUDIT

Corporate governance is a strategic activity that ensures that all processes that are necessary for directing and controlling a business enterprise are implemented effectively. It is about ethical conduct in business. Corporate Governance deals with conducting the affairs of a company such that there is fairness to all stakeholders and that its actions benefit the greatest number of stakeholders. It is about openness, integrity and accountability.

Recent scandals in Indian Corporates have raised questions not only about the practices adopted by companies to solicit business but also about the standards of accountability in public administration including within the government machinery and institutions.

Corporate Governance provisions under the erstwhile listing agreement popularly known as the Clause 49 requirements have been overhauled by the Companies Act 2013, recent adoptions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"). Schedule II of the said regulations have elaborated on the Corporate Governance measures and are applicable to the entities which are listed with recognized stock exchange(s). These have aligned India's corporate governance regime with the developed countries,

Audit of corporate governance processes provides assurance to the various stakeholders that all the required governance activities have been accomplished and which governance norms has not been satisfied by the company for assisting stakeholders in making an informed decision. The Stakeholders don't like to receive surprises and audit of corporate governance activities shall ensure and effective check mechanism on the supervisory and managerial layers of a business enterprise. Corporate Governance Audit mechanism works primarily through Audit Committee and the Auditor.

Need for Corporate Governance Audit (CGA)

The audit serves as a monitoring device and is essential in corporate governance also. The auditors view management as the primary driver of corporate governance and to ensure commitment of the Board in managing the company in a transparent manner.

The history indicates that well-governed companies receive higher market valuations. Improving corporate governance will also increase capital flows to companies; from domestic and global capital; equity and debt; and from public securities markets and private capital sources even the increased customer base.

Scope of Audit of Corporate Governance Activities

The scope of Corporate Governance Audit is wide and generally boundary-less, as the subject covers:

1. Financial and non-financial information's and disclosures
2. Rights of stakeholders;
3. Boards of directors (composition, mix, independence);
4. Control environment (accounting, controls, internal and external audit);
5. Risk management;
6. Transparency and disclosure of financial information and executive compensation;
7. Strategic plans, programs and guidance on social responsibilities.

Role of Audit Committee

Audit Committee plays a vital role in the corporate governance of an entity. The Companies Act, 2013 and LODR regulations in respect of the constitution, terms of reference and role & responsibility of the audit committee, underline the importance of audit process and its contribution to the corporate governance process: structure of audit committee with respect to corporate governance has been defined under LODR regulations as follows:

Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:

- The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- The chairperson shall be an independent director and he shall be present at the annual general meeting to answer shareholder queries.
- The company secretary shall act as the secretary of the committee.

Role of Audit Committee w.r.to corporate governance has been defined under LODR Regulations as follows:

1. oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
2. recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity;
3. approval of payment to statutory auditors for any other services rendered by the statutory auditors;
4. reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:
 - a. matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;
 - b. changes, if any, in accounting policies and practices and reasons for the same;
 - c. major accounting entries involving estimates based on the exercise of judgment by management;
 - d. significant adjustments made in the financial statements arising out of audit findings;
 - e. compliance with listing and other legal requirements relating to financial statements;
 - f. disclosure of any related party transactions;

- g. modified opinion(s) in the draft audit report;
5. reviewing, with the management, the quarterly financial statements before submission to the board for approval;
6. reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the board to take up steps in this matter;
7. reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;
8. approval or any subsequent modification of transactions of the listed entity with related parties;
9. scrutiny of inter-corporate loans and investments;
10. valuation of undertakings or assets of the listed entity, wherever it is necessary;
11. evaluation of internal financial controls and risk management systems;
12. reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;
13. reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;
14. discussion with internal auditors of any significant findings and follow up there on;
15. reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;
16. discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;
17. to look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;
18. to review the functioning of the whistle blower mechanism;
19. approval of appointment of chief financial officer after assessing the qualifications, experience and background, etc. of the candidate;
20. carrying out any other function as is mentioned in the terms of reference of the audit committee.

Illustrative Checklist for Auditing Corporate Governance System in a Company

(A) Accountability

1. Check there is separation of ownership and control.
2. Check whether executive management is accountable to Board.
3. Check whether board is accountable to shareholders.
4. Check whether there is a board / audit committee charter/ policies.
5. Check whether the independent directors have powers to play their role effectively.

6. Check whether sufficient number of meetings held, and are the meetings of sufficient length and depth to cover the agenda and provide healthy discussion of issues.
7. Check whether the auditors of the company have full access to information and authority to present their view points at board meetings.
8. Check whether the company has policies on ethical marketing practices, bribery and dishonesty, employee and customer privacy, fair employment practices, gifts, entertainment, related party transactions and conflict of interests.

(B) Fairness

1. Check whether all shareowners, including minorities are treated equitably.
2. Check whether there are defined procedure for effective resolutions of violations.
3. Check whether the company has pricing policy and fair market practice code.

(C) Transparency

1. Investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase. Any changes in voting rights should be subject to approval by those classes of shares which are negatively affected.
2. Check whether there is a timely, accurate disclosure on all material matters, including: financial and non-financial information, performance, ownership, frauds, going concern crisis and governance.
3. Check whether the company has a policy for making political contributions.
4. Check whether the company has comprehensive insider trading disclosure and compliance practices.
5. Check whether shareholders should be able to make their views known on the remuneration policy for board members and key executives. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.
6. Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.

(D) Responsibility

1. Check whether the company has policy on stakeholder's rights, social responsibility and business sustainability requirements.
2. Check whether the board's responsibility includes review and guiding of corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.

(E) Shareholder Interests

1. Check whether shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:
 - a) amendments to the statutes, or articles of incorporation or similar governing documents 17 of the company;
 - b) the authorisation of additional shares; and
 - c) extra-ordinary transactions, including the transfer of all or substantially all assets that in effect result in the sale of the company.

2. Check whether capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.
3. There exists rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.
4. The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.
5. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress.
6. Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

In the Corporate Governance Audit, the auditor issue the compliance certificate and summarizes his opinion and descriptive narration of areas of improvement would be provided as a part of the audit report under Clause (E) of Schedule V of the SEBI (LODR) Regulations, 2015. The Compliance certificate shall be given either the practicing company secretaries or auditors regarding compliance of conditions of corporate governance which is annexed with the directors report.

CORPORATE GOVERNANCE DUE DILIGENCE – COVERAGE

The following aspects are to be analyzed during corporate governance due diligence. The list provided hereunder is not an exhaustive list.

I. BOARD INDEPENDENCE & GOVERNANCE

- (i) Board Composition
 - (a) Is the chairperson an executive chairperson?
 - (b) If chairperson is executive, does 50% or more of the board consist of independent directors?
 - (c) If the non-executive chairperson is a promoter of the company or is related to any promoter or person occupying management positions at the board level or at one level below the board, does 50% or more of the board consist of independent directors?
 - (d) If the non-executive chairperson is not a promoter of the company or is not related to any promoter or person occupying management positions at the board level or at one level below the board, does 1/3rd or more of the board consist of independent directors?
- (ii) The proportion of independent directors to total number of directors.
- (iii) Senior/lead independent director if any, if the offices of chairperson and chief executive officer are not held by different persons.
- (iv) Written policy/ procedure if any for induction of independent directors.
- (v) Disclosure if any, in the annual report the basis on which independent directors are nominated on the board
- (vi) Letter of appointment of non-executive directors.
- (vii) Maximum tenure of independent directors if any specified.

- (viii) Details of separate meetings of independent directors.
- (ix) Details of orientation programme /training of directors.
- (x) Details of D&O insurance if any provided.
- (xi) Gap between resignation and appointment of independent directors.
- (xii) Details of affirmative statement from each of the independent directors that they meet the criteria of independence (annual and at the time of appointment).

II. BOARD SYSTEMS AND PROCEDURES

- (i) Details of circulation of agenda.
- (ii) Details of board meetings.
- (iii) Attendance in board meeting.
- (iv) Details of meeting through video conferencing.
- (v) List of applicable laws if any maintained by the company.
- (vi) Information /certificate to the board on statutory compliances.
- (vii) Communication of board decisions to various departments.
- (viii) Details of written code of conduct for directors, senior management and other employees.
- (ix) Policy on succession planning at senior management level (just one level below the board),
- (x) Policy on action taken report.
- (xi) Policy on reviewing the effectiveness of board and its members.
- (xii) Share dealings by directors and his relatives.

III. BOARD COMMITTEES

- (i) Names of board committees, its terms of reference, composition and meetings.
- (ii) Details of chairperson of board committees.
- (iii) Proportion of independent directors in audit committee.
- (iv) Risk assessment process by audit committee.
- (v) Process of reviewing the related party transactions by the audit committee.
- (vi) Details of financial experts in the audit committee.
- (vii) Communication mechanism between internal auditor, audit committee and cfo.
- (viii) Details of rotation of auditors/audit partners.
- (ix) Details of pending investor grievances.

IV. TRANSPARENCY AND DISCLOSURE COMPLIANCES

- (i) Details of disclosures in the Annual Report.
- (ii) Disclosure on the details of remuneration paid to Board members.
- (iii) Disclosure on related party transaction.
- (iv) Disclosure on material cases pending against the company.

- (v) Details of directors appointed or proposed to be appointed.
- (vi) Means of communication.
- (vii) Details of filings with Corp filing portal.
- (viii) Disclosures on insider trading.
- (ix) Disclosure of CEO/CFO on compliance under LODR Regulations.
- (x) Compliance of Secretarial Standards issued by ICSI.
- (xi) Compliance of Accounting Standard/Cost Accounting Standard (if applicable).
- (xii) Details of Secretarial Audit if any.
- (xiii) Adverse remarks in Audit Report, Cost Audit Report, Secretarial Audit Report.
- (xiv) Disclosure of director's relationship inter-se.
- (xv) Details of corporate disclosure policy.

V. CONSISTENT SHAREHOLDER VALUE ENHANCEMENT

- (i) Growth in net-worth.
- (ii) Details of dividend paid.
- (iii) Dividend policy, if any.
- (iv) EPS
- (v) Details of public shareholdings.
- (vi) Details of investor satisfaction survey, if any.

VI. OTHER STAKEHOLDERS VALUE ENHANCEMENT

- (i) Details of Vendor/Supplier/Customer Satisfaction surveys.
- (ii) Personnel policy.
- (iii) Policy on employee participation in management.
- (iv) Policy on ESOPs
- (v) Policy on prevention of sexual harassment.
- (vi) Vendor Development policy.

VII. CORPORATE SOCIAL RESPONSIBILITY

- (i) Policy on CSR, if any.
- (ii) CSR/Sustainability Report, if any.
- (iii) Energy conservation initiatives.
- (iv) Water/ waste management initiatives.
- (v) Budget for CSR activities

CORPORATE SOCIAL RESPONSIBILITY (CSR) AUDIT

Corporate Social Responsibility (CSR) includes various social and environmentally responsible guidelines, essential for companies that want to maintain a strong connection to the marketplace. Corporate Social

responsibility includes the way a company treats and proactively contributes to its community, promotes fair working conditions and a non discriminatory environment, conveys transparent and honest accounting reports, and generally earns a reputation of trust and integrity in the society where it serves.

CSR has become a mandatory part of many Companies vide introduction in Companies Act, 2013 and has changed the dynamics of CSR. An increased emphasis on governance, stricter monitoring and reporting obligations require companies to be more accountable, disciplined and strategic in their CSR approach.

CSR under Companies Act, 2013

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 shall

- constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director;
 - In case, where a company is not required to appoint an independent director under sub-section (4) of section 149, the company shall have in its Corporate Social Responsibility Committee two or more directors.
- adopt a CSR Policy in order to develop a sustainable CSR road map to help determine both compliance and social relevance with the Act.
- spend, in every financial year, at least 2% of its average net profits made during the three immediately preceding financial years, in pursuance of its CSR policy.

Objective of CSR Audit

Corporate Social Responsibility (CSR) audit help in measuring the actual social performance against the social objectives set by the Company. It also provides that at what level the decision making, mission statement, guiding principles, and business conduct are aligned with social responsibilities. The audit helps meeting the expectations of stakeholder groups relating to social and environmental responsibilities of the company.

Purpose of CSR Audit

- To ensure compliance with the provisions of Companies Act, 2013 with respect to constitution of the Committee, adoption of policy and appropriate spending towards CSR activities.
- To facilitate transparent monitoring mechanism and a mentor for the company's CSR activities and implementation of CSR policy.
- To evaluate internal control and governance framework
- To assess the project life cycle
- To conduct financial review of projects to confirm the utilization of budgets for achieving desired outcomes.

Methodology for CSR Audit

1. Review of CSR policy, CSR committee, governance structure, strategy, projects, partner identification and selection process, monitoring, evaluation and reporting.
2. Interact with beneficiaries, project team, management and other stake holders.
3. Review of beneficiary identification and selection process, budget allocation, outcomes monitoring and reporting.

4. Review of CSR expenditure, project's direct expenditure, overheads and administrative expenses, traceability and genuineness of expenditure, per beneficiary cost, reasons for inability to spend 2% of profits.

Conducting CSR Audit

The CSR audit may be conducted internally by the company or engage external agencies having expertise in CSR projects. However the companies publish periodical report on their social initiatives and through the Website. However, according to provisions of Companies Act, 2013, Companies are required to annex report on the corporate social responsibilities with the board report of the company.

Coverage of CSR Audit

The CSR audit cover the CSR activities relating to human rights, fundamental human rights, freedom of association and collective bargaining, nondiscrimination, forced labor, child labor, health and safety, career development and training, environmental issues and issues relating to community development and social wellbeing. However the Schedule VII of the Companies Act, 2013 provides the list of activities which could be taken by the company as their CSR Activities. These activated cover the following activities:

- (i) Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.
- (ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- (iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
- (iv) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.
- (v) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;
- (vi) Measures for the benefit of armed forces veterans, war widows and their dependents;
- (vii) Training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports
- (viii) Contribution to the prime minister's national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;
- (ix) Contributions or funds provided to technology incubators located within academic institutions which are approved by the central govt.
- (x) Rural development projects.
- (xi) Slum area development.
- (xii) disaster management, including relief, rehabilitation and reconstruction activities."

Explanation.- For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

Illustrative Checklist for Corporate Social Responsibility provisions under Companies Act, 2013

1. Check if the constitution of CSR Committee is applicable to company.
2. If yes, whether the company has constituted CSR committee of the board consisting of three or more directors, out of which at least one director is an independent director.

In case where a company is not required to appoint an independent director under sub-section (4) of 149, it shall have in its CSR Committee two or more directors.
3. Whether the company has CSR policy approved by the CSR Committee.
4. Whether the CSR committee has recommended list of CSR projects or programme within the purview of schedule VII.
5. Whether the monitoring process of such projects or programme has been established by the company.
6. The composition of CSR committee is disclosed in the board's report.
7. 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
8. Corporate social responsibility committee has recommended the amount of expenditure to be incurred on the activities referred in the Corporate Social Responsibility policy.
9. The company has instituted a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.
10. The company has disclosed the contents of the policy in board's report and at its website, if any.
11. The board's report includes an annual report on CSR containing prescribed particulars.
12. 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.
13. Check if the net profits of the company are in accordance with the provisions section 198 of the Companies Act, 2013 or not.
14. In case the company has built 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.
15. The company has complied with all other requirement of the CSR Rules.

As the CSR audit cover the various direction of the CSR policy of the company which include the planning, execution and the reviews of the CSR activities. This will help to get a clear picture of Corporate Social Responsibility practices adopted by the company. The CSR audit provide an understating of company is position in CSR and also provide an independent assurance on CSR commitment to stakeholders. The different measures of the CSR Audit Includes:

1. How the Company has identified the major socio-economic changes in the key communities caused by its presence/ operations/ major expansion programs.
2. How the company has conducted social surveys before undertaking a particular CSR activity
3. How the company has identified the possible impact of its CSR activities on the life style of communities.
4. How the company undertakes the Impact assessment of the CSR activities.

TAKEOVER AUDIT

The Takeover audit includes the compliances relating disclosure requirements(event based /continuous disclosures), Pricing, Open offer and verification of the compliance of various stage of takeover process etc., under the provision of the Companies Act, 2013 and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. However the takeover audit primarily includes:

- Identify and categorises of acquirer i.e. promoter, promoter group, person in control, persons acting in concert, associates, immediate relatives etc.
- Ensuring that the timely disclosures have been made by promoters, members of promoter group and PAC's relating to acquisition, transfer and encumbrance.
- Effective monitoring of the holdings of promoters, members of promoter group and PACs and take necessary action as required
- Ensuring that timely intimation is sent to stock exchanges in respects of transfers exempt under SEBI (SAST) Regulations,2011.
- Ensuring that timely reports are filed in respect of transfers exempt under SEBI (SAST) Regulations with stock exchanges and SEBI, if applicable.
- Thoroughly examine the takeover regulations through checklist and timeline for compliances.

Consequences of Violation of obligations SEBI (SAST) Regulations, 2011

SAST Regulations, 2011 have laid down the general obligations of acquirer, target company and the manager to the open offer. For failure to carry out these obligations as well as for failure / non-compliance of other provisions of SAST Regulations, penalties have been laid down in the SEBI Act and Regulations made thereunder. These penalties include:

- directing the divestment of shares acquired;
- directing the transfer of the shares / proceeds of a directed sale of shares to the investor protection fund;
- directing the target company / any depository not to give effect to any transfer of shares;
- directing the acquirer not to exercise any voting or other rights attached to shares acquired;
- debarring person(s) from accessing the capital market or dealing in securities;
- directing the acquirer to make an open offer at an offer price determined by SEBI in accordance with the Regulations;
- directing the acquirer not to cause, and the target company not to effect, any disposal of assets of the target company or any of its subsidiaries unless mentioned in the letter of offer;
- directing the acquirer to make an offer and pay interest on the offer price for having failed to make an offer or has delayed an open offer;
- directing the acquirer not to make an open offer or enter into a transaction that would trigger an open offer, if the acquirer has failed to make payment of the open offer consideration;
- directing the acquirer to pay interest of for delayed payment of the open offer consideration;
- directing any person to cease and desist from exercising control acquired over any target company;
- directing divestiture of such number of shares as would result in the shareholding of an acquirer and persons acting in concert with him being limited to the maximum permissible non-public shareholding limit or below.

INSIDER TRADING AUDIT

The insider trading audit includes the compliances requirements (event based /continuous disclosures) under the SEBI (Prohibition of Insider Trading) Regulations, 2015 which includes:

- Initial disclosures of trades which is to be made by only the promoters, key managerial personnel, directors internally;
- Continual disclosures which is to be made by every promoter, employee or director in case value of trade exceed monetary threshold of ten lakh rupees over a calendar quarter; company to accordingly notify stock exchanges within 2 trading days;
- Submission of trading plans
- Appointment of compliance officer
- Pre-clearance for trading
- Codes of fair disclosure and conduct
- Role of the designate person
- Manner of dealing with UPSI (unpublished price sensitive information)

Illustrative checkpoints for verification of Compliance under the SEBI (Prohibition of Insider Trading) Regulations, 2015 includes whether:

1. The company has appointed a compliance officer
2. The company has designate a officer to administer the code of conduct and other requirements under Insider trading regulations. (Regulation 9)
3. The Board of Directors of has formulated a code of practices and procedures for fair disclosure of unpublished price sensitive information as per Schedule A of Insider trading regulation.
4. The Code has been hosted on the website of the company and a copy of the same must be sent to the stock exchange.
5. 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 Insider trading regulations.
6. The Company has formulated code of conduct to regulate, monitor and report trading by insiders as per Schedule B of these regulations.
7. The Company has formulated an internal code of conduct for governing dealing in securities as per the minimum standards set out in Schedule B of Insider trading regulations.
8. Every such code of practices and procedure relating to unpublished price sensitive information and every document thereto has been promptly intimated to the stock exchange where the securities are listed.
9. The trading plan has been formulated in compliance with Regulation 5. If yes, whether necessary compliances have been made.
10. 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)
11. 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)

12. 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)
13. Any action has been sanctioned by the Board for the violation/ contravention of the provisions these regulations. (Regulation 10)
14. 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.
15. The Compliance officer has received undertaking or declaration from insider with respect to the trading plan, as the case may be.
16. The Compliance officer has notified the trading plan to the stock exchange(s), If any.
17. The Company maintains the record of the said disclosures as required for a minimum period of five years.
18. 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.
19. 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.
20. The Company is regular in receiving continual disclosure from the 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.
21. 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.
22. 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.
23. 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.
24. The Company follows Chinese wall procedures & processes as per the norms contained in the code of conduct, wherever applicable.
25. The Compliance officer determines the timing of closure of the trading window and re-opening of the trading window.
26. The Compliance officer has put in place appropriate procedure for pre-clearance of trades for its employees.
27. 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.
28. 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.
29. 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.

30. 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.
31. Any action taken against persons responsible for non-adherence with respect to formulation of code of conduct.
32. Any other prevention mode with respect to insider trading as adopted by the Company.

INDUSTRIAL AND LABOUR LAW AUDIT

Industrial and labour law Audit is an effective tool for compliance management of labour, employment and Industrial laws. Audit helps to detect non-compliances of labour and employment laws applicable to a business and take corrective measures to avoid any unwarranted legal actions by the regulators against the business and its management. Labour Law audit is useful in promoting cordial relations between employees and employers and also lead to better governance and value creation for the business.

Labour Law Audit envisages a systematic scrutiny of records prescribed under labour legislations by a professional like Company Secretary, who shall report to the compliance and non-compliance/extent of compliance and conditions of labour in the Indian industry/business and in any commercial establishments.

Scope of Industrial and labour Audit

The Labour law auditor cover all labour legislations applicable to an Industry/Business or any other commercial establishment, wherein audit is being conducted by the Labour Law Auditor. Scope of labour law audit will certainly differ from business to business which is based on the nature of business, size of business, location of business and number of manpower etc.

Labour laws audit is a unique concept and differs from other compliance/audits in the country. While all other audits are based on financial implications on company/business entity, whereas the labour laws audit consideration of human values, and the rights of the workman. The scope of secretarial audit also includes examining and reporting on whether the adequate systems and processes are in place to monitor and ensure compliance required under the various industrial and labour laws.

Though the Industrial and Labour audit include the various State and Local Laws along with the central laws, However the illustrative list of the compliance requirement under the various central law has been provided below:

Factories Act, 1948

1. The Factories Act, 1948 is applicable to the company. if yes
2. The occupier has atleast fifteen days before occupying or using any premises as a factory, sent to the Chief Inspector a written notice as contained in section 7.
3. The company has renewed the licence on an yearly basis within 2 months from the expiry of the licence as contained under section 7.
4. The provisions regarding registration / licence as prescribed in section 6 have been complied with.
5. The employer has appointed the manager/ occupier of the factory under the Act and sent notice to the competent authority.
6. The company has complied with:
 - health measures as provided in chapter III;
 - safety measures as provided in chapter IV;
 - applicable provisions of chapter IV-A;

- welfare measures as provided in chapter V;
 - working hours of adults as provided in chapter VI;
 - employment of Young Persons as provided in chapter VII; and
 - annual leave with wages as provided in chapter VIII.
7. Under The Factories Act, 1948 Registers, Return & Abstracts.
- Register of Compensatory Holidays - Form -8
 - Register of Adult Workers - Form-11
 - Register of Leave with Wage Register - Form-14
 - Muster Roll - Form-22
 - Register of Accident & Dangerous Occurrences - Form-23
 - Inspection Book
 - Half yearly returns - Form - 21(Before 15th of July & 15th of January) of every year in duplicate)
 - Accident & Dangerous Occurrences - Form - 23 (Every Month)
 - Combined Annual Returns - Form - 20, (Before January every year)
 - Notice of Adult workers - Form - 10
 - Abstract of Factories Act, 1948

Industrial Disputes Act, 1947

1. The Industrial Disputes Act, 1947 is applicable to the company.
2. There is an industrial dispute, as defined under Section 2-A of the Act.
3. The company has maintained a muster roll as required under section 25-D of the Act.
4. The Company is an industrial establishment, having one hundred or more workmen. If yes, the company has constituted Works Committee as required under Section 3 of the Act.
5. Any change in the conditions of service applicable to any workman in respect of any matter specified in the fourth schedule of the Act, has been made after giving 21 days notice to the workmen, of such intention in Form E, as required under Section 9-A of the Act, read with Rule 34.
6. The company has twenty or more workmen. If yes, the company has constituted Grievance Redressal Committee as required under Section 9-C of the Act.
7. The Company is a Public Utility Service. If yes, the lockout if any has been carried out after giving sufficient notice in Form N, as required under Section 22(3) of the Act read with rule 73.
8. The Company has complied with the conditions precedent to the retrenchment of workmen, as required under Section 25-F and Section 25-N, as applicable.
9. The Company maintains a muster roll for its workmen as required under Section 25-D.
10. The Company has compensated for being laid off, the workmen, whose name is in the muster rolls and has completed not less than one year of continuous service.(Rule 25C)
11. The company has compensated the workmen in case of closing down of undertakings, as prescribed in section 25-FFF.

The Payment of Wages Act, 1936

1. The Payment of Wages Act, 1936 is applicable to the company.
2. The payment of wages is made before:
 - a. before the expiry of the 7th day of the following month, when less than 1000 persons are employed.
 - b. before the expiry of the 10th day of the following month, when more than 1000 workers are employed.
3. The deductions made from the wages of the employee are in accordance with section 7 of the Act.
4. Any deduction has been made on account of damage or loss.
5. If any deduction has been made on account of damage or loss, show cause notice has been given to the employee.
6. In case any deduction has been made for unauthorized absence, opportunity of being heard is given.
7. The registers and records giving particulars of persons employed, the work performed by them, the wages paid to them, the deductions made from their wages and the receipts given by them are maintained and preserved for a period of 3 years or more.
8. The employer has displayed the abstract of the Act and Rules made thereunder in the manner prescribed under section 25.

The Minimum Wages Act, 1948

1. The Minimum Wages Act, 1948 is applicable to the Company.
2. The company has been paying the minimum wages as notified from time to time by the appropriate Government under the Act.
3. The company has paid wages in cash. If not, the wages in kind has been paid after following the procedure prescribed under section 11 of the Act.
4. The company follows the conditions prescribed with regard to working hours, working day under section 13 of the Act.
5. The company has paid overtime rate as prescribed under section 14 of the Act read with rule 25.
6. The company has maintained all registers and records that are required to be maintained under section 18 of the Act and rule 26.
7. The company has followed the procedure prescribed with respect to payment of undisbursed amounts due to employees, for reasons such as death, whereabouts not known etc.
8. The company has followed the procedure prescribed in rule 21 with respect to deductions made from the wages.
9. The company has followed time and conditions of payments of wages prescribed in rule 21.
10. Notices in Form No. IX-A, containing the minimum rate of wages has been displayed at the main entrance to the establishment, as specified in rule 22.

Employees' State Insurance Act, 1948

1. The Employees' State Insurance Act, 1948 is applicable to the company.
2. The factory or establishment to which the Act applies has been registered.

3. The rate of contribution of the employer and employee is in accordance with the Act. [Rule 51 of ESI (Central) Rules, 1950.]
4. The manner and time Limit for making payment of contribution is in accordance with the Act.
5. The employer has maintained the register of employees in Form No. 6.
6. Submission of returns/reports:
 - a. Annual return in Form No. 01-A;
 - b. Return of contributions in Form No. 5;
 - c. Report of accident in Form No. 12;
 - d. Report of death of insured persons.
7. The benefits provided in Chapter V of the Act were made available to the applicable employee.

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

1. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is applicable to the company.
2. The contributions made by the employer and the employee and payment thereof are in accordance with para 29 and 30 of the Employees' Provident Funds Scheme, 1952.
3. The employer has obtained declarations from the persons taking up the employment. (Para 34 of the scheme)
4. The employer has prepared the contribution card in Form No. 3 or 3-A as appropriate in respect of every employee in his employment.
5. The employer has sent to the Commissioner:
 - a. Consolidated return in the form specified by the commissioner.
 - b. Monthly return in Form No. 5 together with declaration in Form No. 2.
 - c. In such form as the commissioner may specify of employees leaving service of the employer during the preceding month.
 - d. Inspection note book in such form as the commissioner may specify, is maintained.
 - e. Accounts relating to amount contributed to the fund by the employer and by the employee have been maintained. (Para 36 of scheme)
6. The employer has furnished particulars of ownership in Form No. 5-A to the Regional Commissioner. (Para 36 A of scheme)
7. The employer has forwarded the monthly abstract to the commissioner. [Para 38 (2) of scheme]
8. Consolidated annual contribution statement in Form No. 6-A was sent to the commissioner. [Para 38(3) of scheme]
9. Submission of contribution card to the commissioner with a statement in Form No. 6.
10. Any proceedings under the Act have been initiated against the Directors for recovery of dues.
11. If the Employer has created its own trust, whether the terms of trust are more beneficial than those provided under the trust.
12. The conditions imposed by PF Commissioner for the creation of Trust are satisfied.
13. The provisions relating to Employees' Pension Scheme, 1995 have been complied with.

14. The provisions relating to Employees' Deposit Linked Insurance Scheme, 1976 have been complied with.

The Payment of Bonus Act, 1965

1. The Payment of Bonus Act, 1965 is applicable to the company.
2. Computation of available surplus, allocable surplus and bonus are correctly arrived at.
3. Any amount has been deducted from bonus and if so, whether they are in accordance with the provisions of section 18.
4. Bonus is paid to the eligible employees.
5. The minimum or maximum amount of bonus paid is in accordance with section 10 or section 11, as the case may be.
6. The company has paid bonus to the employee:
 - (a) Where there is a dispute regarding payment of bonus pending before any authority under section 22- within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
 - (b) In any other case-within a period of eight months from the close of the accounting year.
7. The company has maintained the registers as provided in rule 4.
8. The company has submitted the annual return of payment of bonus to the Inspector in Form No. D within thirty days after the expiry of the time limit prescribed in section 19.

The Payment of Gratuity Act, 1972

1. The Payment of Gratuity Act, 1972 is applicable to the company.
2. There are employees who have worked for a continuous period of 5 years or more.
3. Any gratuity has been paid to any employee. If yes, whether it has been paid within 30 days.
4. The employer has displayed a notice as provided in rule 4, specifying the name of the officer with designation who is authorised to receive notice under the Act or the rules made thereunder.
5. The employer has complied with the provisions related to nominations as specified in rule 6.
6. Gratuity of any employee has been forfeited. If yes, whether an opportunity of being heard is given?
7. The gratuity has been forfeited for the reasons as specified in the Act.
8. The employer has displayed the abstract of the Act and rules made thereunder at or near the main entrance of the establishment, as specified in rule 20.
9. The employer has obtained insurance for liability of payment of gratuity as specified in section 4A of the Act.

The Contract Labour (Regulation and Abolition) Act, 1970

1. The Contract Labour (Regulation and Abolition) Act, 1970 is applicable to the company.
2. The principal employer has obtained the certificate of registration for the establishment.
3. The appropriate Government has by a notification prohibited the employment of contract labour under section 10.

4. The contractors have obtained license from the Licensing Authority for contract labour undertaken or executed by them.
5. The contractors have got their license renewed in time.
6. The contractors are employing workmen as per license and registration certificate.
7. The number of workmen actually employed by the contractor's tallies with the number of workmen shown in the license.
8. The contractors are sending half-yearly returns in Form No. XXIV in time.
9. Where the wage period is one week or more, the contractors are issuing wages slips in Form No. XIX one day prior to the disbursement of wages.
10. The principal employer maintains register of contractors in Form No. XII.
11. The principal employer has sent annual return in Form No. XXV to the Registering Officer.
12. The principal employer has within fifteen days of commencement or completion of each contract, submitted return in Form No. VI-B to the Inspector.
13. Minimum rate of wages are being paid to the contractor labour in the presence of authorized representative of the principal employer.
14. The authorized representative of the principal employer gives a certificate to this effect at the end of the entries in the register of wage- cum- Muster Roll, as the case may be.
15. The contractors are properly depositing ESI, EPF contributions in respect of their workmen and submitting copies of the challan to the HR Department of the company.
16. The contract labour is provided the facility of rest room, canteen, wash room, first aid and other facilities.
17. The contract labour is granted leave with wages.
18. The contract labour is being paid over time at double rate.
19. The workmen engaged by the contractor are ensured benefits from ESI Scheme including issue of cards, temporary slips and are provided medical facilities.
20. The contract labour is being given contribution slips of EPF issued by the Regional Provident Commissioner.
21. The payment of wages to contract labour is being made in accordance with rule 65.
22. The leave applications and gate passes of the contract labour are being signed by the contractor and his agent.
23. The gate passes to the contract Labour are issued and signed by the company's employees.
24. The contractors are maintaining records as provided in rule 78.
25. Under The Contract Labour (Regulation & Abolition) Act, 1970.
 - Registration Certificate (Before appointing contractor) -Form-1
 - Register of Contractor - Form-XII
 - Register of Employees employed by Contractor - Form-XIII
 - Muster Roll, Wage Register, Over Time Register, Fine Register
 - Deduction Register, Advance Register (contractor)

- Notice regarding rates of wages
- Display of the Act & Rules
- Half yearly return by contractor - Form – XXIV
- Annual Return by Principle Employer - Form – XXV (before 15th Feb)

The Maternity Benefit Act, 1961

1. The Maternity Benefit Act, 1961 is applicable to the company.
2. The employer has knowingly employed a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of her pregnancy.
3. Any pregnant woman has made any request not to give her any work which is of an arduous nature or which involves long hours of standing, etc. during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery.
4. Any woman employee is entitled for maternity benefit, medical bonus and nursing break and if yes, whether payment has been made and nursing break was allowed in accordance with the Act.
5. The employer exhibited the abstract of the provisions of the Act and the rules made thereunder in accordance with section 19 of the Act.
6. Whether the employer has maintained muster rolls, registers and records as prescribed, if any, by the appropriate Government.
7. Whether the employer has submitted annual return in the form prescribed, if any, by the appropriate Government.

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

1. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 is applicable to the company.
2. The occupier has sent notice to Inspector as per section 9 when a child is employed or permitted to work.
3. The employer has employed any child labour in occupations set forth in Part-A or Process set forth in Part-B of the Schedule to the Act.
4. The employer has maintained the register in Form No. A in respect of children employed or permitted to work as specified in section 11.
5. The occupier has displayed notice containing abstract of sections 3 and 14 as specified in section 12.

The Industrial Employment (Standing Orders) Act, 1946

1. The Industrial Employment (Standing Orders) Act, 1946 is applicable to the company.
2. One hundred or more workmen are employed, or were employed on any day of the preceding twelve months.
3. The industrial establishment has submitted to the Certifying Officer, five copies of the draft Standing Orders proposed by it for adoption in the establishment.
4. The text of the Standing Orders as finally certified has been prominently posted by the company in English and in the language understood by the majority of workmen on special boards to be maintained for the purpose.

5. The industrial establishment has modified the Standing Orders on agreement between the employer and the workmen or a trade union or other representative body of the workmen.
6. Any workman was suspended by the industrial establishment pending investigation or inquiry into complaints or charges of misconduct.
7. The industrial establishment has paid any subsistence allowance to any suspended employee.

The Employees' Compensation Act, 1923

1. The Employees' Compensation Act, 1923 is applicable to the company.
2. Any personal injury is caused to an employee by an accident arising out of or in the course of employment. If yes, the company has paid compensation as prescribed under Section 4 of the Act.
3. The company has maintained notice book in its premises, for reporting notice of accidents as prescribed in Section 10(3) of the Act.
4. The company has reported of fatal accident or serious bodily injuries in Form No. E-E to the Commissioner, as prescribed in section 10-B read with Rule 11 of the rules.
5. The company has deposited compensation with the Commissioner in respect of the workman whose injury has resulted in death and has furnished statement in Form No. A, OR In other cases company shall furnish statement in Form 'AA', as prescribed in section 8(1) read with rule 6(1). (As Applicable)
6. The company has furnished a statement in Form 'D', while depositing compensation, as required under section 8(2) read with rule 9.
7. The company has sent a return as to compensation paid during the previous year. (As specified by the State Government in respective state law)
8. On settlement of compensation amount in between company and workman, company executed a memorandum of agreement with the workman in Form No. K, L or M, as the case, may be and submitted such agreement along with an application to register it to the Commissioner, as prescribed in rule 48.
9. The provisions for reservation of apprentice training places for SC/ST/OBC have been made in designated trades.
10. The contract of apprenticeship was sent by the employer to the apprenticeship advisor/entered on the port-site within 7 days for verification & registration.

Equal Remuneration Act, 1976

1. Equal Remuneration Act, 1976 is applicable to the Company.
2. Payment of equal remuneration has been made to all for same work or work of similar nature and there is no discrimination between men and women while recruiting or subsequent to recruitment, promotion etc. (As per Section 4 read with section 5)
3. The company has maintained register in relation to workers in Form No. D as required under rule 6.

The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959

1. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 is applicable to the company.
2. The company has notified the vacancies to employment exchanges, as prescribed in section 4 of the Act read with rule 5.

3. The company has furnished quarterly returns in Form No. ER-1, biennial return in Form No.ER-II to local employment exchange as prescribed in rule 6.

CYBER AUDIT

Cyber security is an attempt to minimising any risk of financial loss, disruption or damage to the reputation of an organisation that may arises from the failure of its information technology systems. The objective of the cyber audit is to provide an assessment of the operating effectiveness of cyber security policies and procedures, identify, protect, detect, respond and recover processes and activities to the board. The Cyber audit program generally covers sub-processes such as asset management, awareness training, data security, resource planning, recover planning and communications, in order to identify internal control and regulatory deficiencies that could put the organization at risk.

The security and control issues which deals under cyber security audits includes

1. Protection of sensitive data and intellectual property
2. Protection of networks to which multiple information resource are connected
3. Responsibility and accountability for the device and information contained in it

The scope of a cyber security audit includes:

1. Data security policies relating to the network, database and applications in place
2. Data loss prevention measures deployed
3. Effective network access controls implemented
4. Detection/prevention systems deployed
5. Security controls established (physical and logical)
6. Incident response program implemented.

Dimension of the Cyber Security Audit Process

Management

Management of the Company ultimately owns the risk decisions made for the organization. Therefore, it has a vested interest in ensuring that cyber security controls exist and are operating effectively. Decisions are typically made based on guidance received during the risk management processes, for taking appropriate decisions.

Risk Management

Risk assessments are typically made based on guidance by the Cyber security officer at an organization and enterprise management make decisions, employing risk management processes. The objective in any risk assessment is two fold. First, it is critical to communicate the state of the risk so that it is easy to understand and be clear on the level of risk involved. Secondly and just as significantly the ways in which to address that risk must be identified as well. This provides both problem and solution, and mitigates the negative impact of that risk to an enterprise. The risk landscape is ever-changing. It is important to have defined processes, trained and competent cyber security resources, and a governance framework to ensure that appropriate actions are carried out by enterprise leadership and managed effectively to address current and emerging threats.

Internal Audit

Internal auditors and risk management professionals have key roles to play, as does enterprise management. Cyber Auditing is a security measure not an inconvenience. It is critical to protecting an enterprise in today's

global digital economy. The internal audit department plays a vital role in cyber security auditing in many organizations, and often has a dotted-line reporting relationship to the audit committee to ensure an independent view is being communicated at the board level of the enterprise. Audit helps enterprises with the challenges of managing cyber threats, by providing an objective evaluation of the controls and making recommendations to improve them as well as assisting the senior management and the board of directors understand and respond to cyber risks. Organizations, especially within the public sector, also contract for the services of external auditors to provide independent assurance of the financial and operational controls primarily to ensure the controls design is effective and the needs of the organization are being met.

Illustrative checkpoint on the Cyber Security Audit

Personnel Security

1. Whether the staff wears ID badges?
2. Whether it is a current picture part of the ID badge?
3. Are authorized access levels and type (employee, contractor, visitor) identified on the Badge?
4. Whether the credentials of external contractors are checked?
5. Whether the company has policies addressing background checks for employees and contractors?
6. Whether the Company has a process for effectively cutting off access to facilities and information systems when an employee/contractor terminates employment?

Physical Security

1. Whether the Company has policies and procedures that address allowing authorized and limiting unauthorized physical access to electronic information systems and the facilities in which they are housed?
2. Whether the Company's policies and procedures specify the methods used to control physical access to your secure areas, such as door locks, access control systems, security officers, or video monitoring?
3. Whether the access to the computing area is controlled (single point, reception or security desk, sign-in/sign-out log, temporary/visitor badges)?

Account and Password Management

1. Whether the Company has policies and standards covering electronic authentication, authorization, and access control of personnel and resources to your information systems, applications and data?
2. Whether the Company ensures that only authorized personnel have access to the computers?
3. Whether the Company requires and enforces appropriate passwords?
4. Are your passwords secure (not easy to guess, regularly changed, no use of temporary or default passwords)?

Confidentiality of Data

1. Whether the Company is exercising responsibilities to protect sensitive data under their control?
2. Whether the most valuable or sensitive data encrypted?
3. Whether the Company has a policy for identifying the retention of information (both hard and soft copies)?

Compliance and Audit

1. Whether the Company reviews and revises the security documents, such as: policies, standards, procedures, and guidelines, on a regular basis?
2. Whether the Company audits the processes and procedures for compliance with established policies and standards?
3. Whether the Company test the disaster plans on a regular basis?
4. Does management regularly review lists of individuals with physical access to sensitive facilities or electronic access to information systems.

ENVIRONMENT AUDIT

According to Section 2(a) of the Environmental Protection Act, 1986, 'Environment' includes Water, air and land. The inter-relationship which exists among and between, (i) water, air, land, and (ii) human beings, other living creatures, plants, microorganisms and property.

Environmental audit in general term reflect various types of evaluations intended to verify the environmental compliance and management system implementation gaps, along with related corrective actions and it has a wide variety of meanings. Environmental Audit refers to verification and assessment of environmental measures in an organisation.

Objectives of environmental audit are to evaluate the efficacy of the utilization of resources of man, machine, materials, and to identify the areas of environmental risks and liabilities and weaknesses of management system and problems in compliance of the directives of the regulatory agencies and control the generation of pollutants and / or waste.

An environmental audit from a financial perspective is conducted to ensure that public funds were spent efficiently and for their intended purposes. During an audit of financial statements related to environmental matters, the following issues will merit special attention:

- Initiatives to prevent, abate, or remedy damage to environment;
- Conservation of renewable and non-renewable resources; (Mentioned In Director's Report)
- Consequences of violating environment laws, rules and regulations;
- Consequences of vicarious liability imposed by the government, courts etc.

There are generally two different types of environmental audits: Compliance audits and Management systems audits. As the name implies, these audits are intended to review the site's/company's legal compliance status in an operational context. Compliance audits generally begin with determining the applicable compliance requirements against which the operations will be assessed. This tends to include Central Laws, state laws, and local Laws, Rules and Regulations.

1. Environmental Compliance audits

Compliance audit with respect to environmental issues will relate to providing assurance that governmental and private companies activities are conducted in accordance with the relevant laws, rules, notifications, regulations and standards as also policies and strategies. The audit have limited scope which is pre-defined under various legislations. Further the Audits are also focused on operational aspects of a company/site, rather than the contamination status of the real property. The following law covered under the environment compliance audit:

Air Pollution

1. The Indian Boilers Act, 1923.

274 PP-SACM&DD

2. The Motor Vehicle Act, 1939 (Repealed by Act No. 59 of 1988).
3. The Mines and Minerals (Regulation and Development) Act, 1947.
4. The Factories Act, 1948.
5. The Industries (Development and Regulation) Act, 1951.
6. The Air (Prevention and Control of Pollution) Act, 1981.

Water Pollution

7. The River Boards Act, 1956.
8. The Merchant Shipping (Amendment) Act, 1970.
9. The Water (Prevention and Control of Pollution) Act, 1974
10. The Water (Prevention and Control of Pollution) Cess Act, 1977

Radiation

11. The Atomic Energy Act, 1962.

Pesticides

12. The Poison Act, 1919.
13. The Factories Act, 1948.
14. The Insecticides Act, 1968.

Miscellaneous

15. The Indian Fisheries Act, 1897.
16. The Indian Forest Act, 1927.
17. The Prevention of Food Adulteration Act, 1954.
18. The Ancient Monuments and Archaeological Sites and Remains Act, 1958.
19. The Wildlife (Protection) Act, 1972
20. The Urban Land (Ceilings and Regulation) Act, 1976.
21. The Forest (Conservation) Act, 1980
22. The Environment (Protection) Act, 1986.
23. The Public Liability Insurance Act, 1991.

2. Environmental Management Systems Audit

ISO 14001 is a voluntary international standard for *environmental management systems* ("EMS"). An EMS meeting the requirements of ISO 14001:2015 is a management tool enabling an organization of any size or type to:

1. Identify and control the environmental impact of its activities, products or services;
2. Improve its environmental performance continually, and
3. Implement a systematic approach to setting environmental objectives and targets, to achieving these and to demonstrating that they have been achieved.

ISO 14001 is an environment management system standard published by International Organisation for

standardization in the year 1996 and later updated in the year 2005. It provides highly effective, globally accepted framework for establishing and continually improving the effectiveness of environmental management. Implementation of ISO 14001 may bring with it both reductions in environmental risk and environmental costs.

The International Organization of Standardization (ISO) defines an environmental management system as “part of the management system used to manage environmental aspects, fulfill compliance obligations, and address risks and opportunities.” The framework in the ISO 14001 standard can be used within a plan-do-check-act (PDCA) approach to continuous improvement.

ISO 14001:2015 should be used by any organization that wishes to set up, improve, or maintain an environmental management system to conform with its established environmental policy and requirements. The requirements of the standard can be incorporated into any environmental management system, the extent to which is determined by several factors including the organization’s industry, environmental policy, products and service offerings, and location.

At the highest level, ISO 14001:2015 covers the Context of the organization, Leadership, Planning, Support, Operation, Performance evaluation Improvement with regard to environmental management systems:

Process of Environment Audit

1. Understanding the industrial activity and Pre-audit or planning stage

Collection of background information about the entity, definition of objectives and scope of audit, formation of audit team and development of audit plan and protocols.

2. On-site or Field Audit

Communicate the objectives of the audit to key faculties and schedule necessary meetings and interviews, identify areas of concern, site / facility inspection, evidence / records / document review, staff interviews, initial review of findings.

3. Assessing the impact and post-audit

Final evaluation of findings, submit preliminary report with type and magnitude of impact on the environment, get approval of management, introduce the findings to the auditees, submit final environment audit report along with short/ long term acceptability.

4. Follow up or review

Verify the action taken on audit findings and recommendations.

CHECKLIST ON ENVIRONMENT AUDIT

A. Environment Policy

1. Whether the company have defined and documented its environmental policy.
2. Whether such policy is based on significant environmental aspects and corporate policy.
3. Whether such policy is appropriate to the organization’s activities and their potential environmental impacts and regulatory requirements.
4. Does the policy include commitments to:
 - Continual improvement
 - Prevention of pollution
 - Comply with environmental legislation and other requirements

5. Does the policy provide a framework for setting environmental objectives and targets.
6. Is the policy documented, implemented, maintained and communicated to all persons working for or on behalf of the organization.
7. Is the policy available is freely available to public.

B. Environment Aspects

1. Whether a procedure been established, implemented and maintained to identify the environmental aspects of its current and relevant past activities.
2. Whether aspects related to potential significant environmental aspects been considered in establishing and implementing the EMS.
3. Whether aspects having legal and/or regulatory reporting, monitoring or operational requirements been identified as "significant" aspects.
4. Are the following environmental aspects considered in sufficient detail:
 - Air emission
 - Wastewater effluent
 - Waste management
 - Soil pollution
 - Raw material and natural resource usage
 - Hazardous and toxic material
 - Impact on well being (e.g. noise, smell, heat, landscape, protection)
 - Utility, energy and resource
5. Other environmental specific issues on site such as housekeeping, storage, areas, piping
6. Are the following operational aspects considered:
 - Normal operating conditions
 - Abnormal operating conditions (e.g. start up and shut down conditions, maintenance, incidents)
 - Development of new or modified processes, products or services
7. Actual and potential emergency conditions and accidents.
8. Have significant aspects been identified.

C. Legal and Other Requirements

1. Has a procedure been developed and implemented to identify applicable regulatory, legal and other requirements.
2. Are current copies of all applicable regulatory and other requirements accessible to personnel as necessary.
3. Have all further agreements the organization needs to fulfill been integrated in the procedure:
 - Business related agreements
 - Agreements with public authorities

4. Guideline other than legal requirements (e.g. company policy, industry codes and practices, etc.)
5. Are the following licenses, permits and approvals available to demonstrate full legal compliance:
 - Licenses of waste collectors
 - Air emission permits
 - Wastewater discharge permits
 - Permits and licenses related to dangerous goods
 - Environmental fees, e.g. wastewater discharge fee
 - Registration at authorities (e.g. wastewater discharge, air emission inspection)

INFORMATION SYSTEMS AUDIT

Information systems auditing or systems audit is an ongoing process of evaluating controls, collecting and evaluating evidence to determine whether a computer system safeguards assets, maintains data integrity, allows organizational goals to be achieved effectively, and uses resources efficiently. Thus, information systems auditing supports traditional audit objectives; attest objectives (those of the external auditor) that focus on asset safeguarding and data integrity, and management objectives (those of the internal auditor) that encompass not only attest objectives but also effectiveness and efficiency objectives.

An information systems audit performed in an organisation is a comprehensive examination of a given targeted system. The audit consists of an evaluation of the components which comprise that system, with examination and testing in the following areas:

- High-level systems architecture review
- Business process mapping (e.g. determining information systems dependency with respect to user business processes)
- End user identity management (e.g. authentication mechanisms, password standards, roles limiting or granting systems functionality)
- Operating systems configurations (e.g. services hardening)
- Application security controls
- Database access controls (e.g. database configuration, account access to the database, roles defined in the database)
- Anti-virus/Anti-malware controls
- Network controls (e.g. running configurations on switches and routers, use of Access control lists, and firewall rules)
- Logging and auditing systems and processes
- IT privileged access control (e.g. System Administrator or root access)
- IT processes in support of the system (e.g. user account reviews, change management)
- Backup/Restore procedures

During the System audit, the auditors are required to understand and evaluate the overall control environment. The control environment reflects the overall attitude of, awareness of, and actions by the board of directors, management, and others concerning the importance of internal controls in the enterprise. General objectives of System Auditing are:

- Validation of the organizational aspects and administration of the information service function.
- Validation of the controls of the system development life cycle.
- Validation of access controls to installations, terminals, libraries, etc.
- Automation of internal auditing activities.
- Internal training.
- Training members of the information service function department

System Audit and SEBI

In order to bring stability and integrity in the securities market, and in view of the various technological developments and innovations, for bringing efficiency to the markets, SEBI vide Circular No. CIR/MRD/DMS/34/2013, dated November 06, 2013, has prescribed stock broker, who use Algorithmic Trading or provide their clients with the facility of Algorithmic Trading system audit framework and mandated Stock Exchanges to ensure conduct of system audit of its members as per the prescribed framework and monitor the same.

CHECKLIST ON SYSTEMS AUDIT

A. MANAGEMENT CONTROLS

1. Security Policy and Standards

1. Whether the organization has a Security Policy?
2. If a security policy exists, it needs to be examined for adequacy in proportion to the risk.

2. Constitution of Steering Committee

The formulation and implementation of a sound security policy should be a team effort, brought into effect by a committee in which there is at least one member of the Board of Directors apart from the Chief Information Officer (CIO) and user HoDs.

3. Business Continuity Planning

The IS Auditor should examine all such possibilities by which the availability of Computer Systems is threatened with temporary or permanent breakdown. In sensitive areas, even proofing against mob violence/terrorist strikes should be kept in view.

4. Systems Development Methodology:

The documentation should be properly cross-indexed. The effect of a change made in the system should be well understood and thorough testing should be done and documented. The System Auditor should get necessary evidence and comment on the lack of proper adherence to procedure

B. OPERATIONAL CONTROLS

1. Monitoring physical assets

1. Whether monitoring of physical assets are done in regular intervals?
2. Any discrepancy in the data collected and the current data of physical assets are addressed immediately or not?

2. Ensure adequate environmental controls:

1. Whether proper facilities of Air-conditioning (dust, temperature & humidity controls), Power Conditioning (Online UPS functioning all the time with backups, proper earthing) are timely reviewed?
2. Whether the cable connections/electronic points are functioning properly or not is reviewed on regular intervals?

C. ORGANIZATIONAL CONTROLS

1. Whether the roles, responsibilities and duties of User Departments and IT Department are defined?
2. The CIO should have three reportees– one for taking care of the development team, one for ensuring Information System / IT Center security and another for managing the facilities (i.e., operations and maintenance of hardware), OS, database administration, vendor management, service providers etc.

D. APPLICATION CONTROLS

1. Whether each of the Computer Systems and subsystems must have its own set of controls for Inputs, processing & outputs. Processing controls should also ensure checks for legal compliance.

FORENSIC AUDIT

Forensic Audit is a dynamic and strategic tool in combating corruption, financial crimes and frauds through investigations and resolving allegations of fraud and embezzlement. It may be conducted to determine negligence. Forensic is the application of science to crime concerns. Forensic science is science applied to legal matters especially criminal matters.

“Forensic” means suitable for use in the court of law. The examination a company's financial records to derive evidence which can be used in a court of law is a Forensic Audit. It includes the use of accounting, auditing and investigative skills to assist in the legal matters.

Forensic audits are highly specialized, and the work requires detailed knowledge of fraud investigation techniques and the legal framework. Forensic accountants are trained to look beyond the numbers and has necessary skills and experience to accept the work. Highly specialized and the work requires detailed knowledge of fraud investigation techniques and the legal framework (civil, criminal laws and human psychology) and to identify substance over form when dealing with an issue. .

A forensic auditor is required to have specialist training so that he can understand the legal framework and also has the knowledge of forensic audit techniques. He should also have the expertise in the use of IT tools and techniques that facilitate data recovery and analysis.

A forensic audit, also known as forensic accounting, refers to the application of accounting methods for detection and gathering evidence of frauds, embezzlement, or any other such white-collar crime. It is the application of accounting skills to legal questions.

Forensic audit is done in two-phases.

1. **Investigation Services** – At first the auditor begins with an investigation; looking into the accounts and statement, and identifying defects in it. It then moves on to find ways to deal with such defects, which is a reactionary function.
2. **Litigation Services** – It is entirely possible the frauds detected be resolved within the company itself. However, there are times when they need to be resolved through legal channels. During such situations, forensic auditors give litigation support to the advocates. Their advice and consultation about the legalities of commercial disputes are very essential. Moreover, they also provide research assistance by giving relevant documents and facts to support a legal claim, and also help decide the

extent of damage that is required. They are also called up by the Court as an expert witness for further investigation.

Forensic audits are done in following areas:

- Criminal investigations
- Professional negligence cases
- Arbitration cases
- Fraud investigation and risk /control reviews
- Settlement of insurance claims
- Dispute settlement

PURPOSE OF FORENSIC AUDIT

I. Corruption

In Forensic audit, while investigating fraud, auditor would look out for:

Conflicts of interest – When fraudster used his/her influence for personal gains detrimental to company. For example, if a manager allows and approves inaccurate expenses of employee with whom he has personal relations. Even though the manager is not benefitted from this approval but he is likely to receive personal benefits after making such inappropriate approvals.

Bribery – As the name suggest offering money to get things done or influence a situation one's favour would be bribery.

Extortion – In above example, if someone demands money so as to award Tender to other party then it would amount to extortion

II. Asset Misappropriation

This is the most common and prevalent fraud carried out by fraudsters. Misappropriation of cash, raising fake invoices, payments made to non existing suppliers or employees, misuse of assets or theft of Inventory are few examples of such asset misappropriation.

III. Financial statement fraud

Companies get into such type of frauds so as to show a better performance of the company than what it is actually. This is done so as improve liquidity or ensure top management keep earning the bonuses or due to market pressure on performance.

Some examples of such frauds are – Intentional forgery of accounting records; omitting transactions – either revenue or expense transactions, non-disclosures of relevant details from the financial statements; or not applying the requisite financial reporting standards.

Procedure of Forensic Auditing Investigation

Step 1 – Accepting the Investigation

A forensic audit is always assigned to an independent firm/group of investigators in order to conduct an unbiased and truthful audit and investigation. Thus, when such a firm receives an invitation to conduct an audit, their first step is to understand the business, Identify possible frauds that could exist and determine whether or not they have the necessary tools, skills and expertise to go forward with such an investigation. They need to do an

assessment of their own training and knowledge of fraud detection and legal framework. Only when they are satisfied with such considerations, can they go ahead and accept the investigation.

Step 2 – Planning the Investigation

Planning the investigation is the key step in a forensic audit. The auditor(s) must carefully ascertain the goal of the audit so being conducted, and to carefully determine the procedure to achieve it, through the use of effective tools and techniques. Before planning the investigation, they should catalog possible fraud symptoms,

Symptoms of Fraud

- Delayed submission of returns information etc.;
- Delayed remittances into Bank;
- Delay or non preparation of Bank reconciliation statements;
- Lifestyle of promoters/directors and key employees ;
- Continued internal control lapses and not following norms of corporate governance

Internal Indicators

- Delay in finalisation of accounts;
- Frequent changes in Accounting Policies;
- Continuing Losses;
- Over drawl of loans or advances;
- Higher cost per unit of production;
- High amount of losses or wastage shown in books v/s Norms;
- High investment in group companies
- Profit not supported by increased cash availability

They should also be clear on the final categories of the report, which are as follows,

- Identifying the type of fraud that has been operating, how long it has been operating for, and how the fraud has been concealed;
- Identifying the fraudster(s) involved;
- Quantifying the financial loss suffered by the client;
- Gathering evidence to be used in court proceedings;
- Providing advice to prevent the recurrence of the fraud.

Illustrative Checklist on Forensic Audit

- Whether the fraud detected is at the management level or employee level?
- What was the reason or motive behind the fraud?
- How is the internal check on cash transactions, raising of invoices etc.?
- Who is responsible for the checking if all the things are in order in regular intervals?
- What is the nature of fraud – corruption, assets misappropriation or financial misstatement?
- Whether the entries passed are properly reflected in the balance sheet without any omission?

- Whether IT returns are filed every year properly?
- Whether bank entries are reconciled on regular basis? Whether bank statements do not have any discrepancy.

Fraud Triangle and Fraud Risk

A fraud triangle is a tool used in forensic auditing that explains three interrelated elements that assist the commission of fraud- Pressure (motive), opportunity (ability to carry out the fraud) and rationalization (justification of dishonest intentions). Fraud risk is the vulnerability a company/organisation has to those who are capable of overcoming the three elements in the fraud triangle. Fraud risk assessment is the identification of fraud risks that exist in the company/organisation. The planning involves the formulation of techniques and procedures that align with the fraud risk and fraud risk management.

Planning also includes the identification of the best way/mode to gather evidence. Thus, it is necessary that ample research should be done regarding certain investigative, analytical, and technology-based techniques, and also related legal process, with regard to the outcome of such investigation.

Step 3 – Gathering Evidence

In forensic auditing specific procedures are carried out in order to produce evidence. Audit techniques and procedures are used to identify and to gather evidence to prove, for example, how long have fraudulent activities existed and carried out in the organization, and how it was conducted and concealed by the perpetrators. In order to continue, it is pertinent that the planning stage has been thoroughly understood by the investigating team, who are skilled in collecting the necessary evidence. It is also important to keep clear sequence of custody until the evidence is presented in court. A logical flow of evidence helps in understanding the fraud and evidence presented in a better manner. If the same is not done then the evidence can be challenged in court, or the court would not admit it.

The investigators can use the following techniques to gather evidence or data about symptoms, testing controls to gather evidence which identifies the weaknesses, which allowed the fraud to be perpetrated.

- Using analytical procedures to compare trends over time or to provide comparatives between different segments of the business applying computer-assisted audit techniques, for example, to identify the timing and location of relevant details being altered in the computer system.
- Discussions and interviews with employees.
- Substantive techniques such as reconciliations, cash counts and reviews of documentation.
- **Forensic Data Analysis (FDA)** is the technology used to conduct fraud investigations; the process by which evidence is gathered, summarized and compared with existing different sets of data. The aim here is to detect any anomalies in the data and identify the pattern of such anomalies to indicate fraudulent activity.

Step 4 – Reporting

The reporting stage is the most obvious element in a forensic audit. After investigating and gathering evidence, the investigating team is expected to give a report of the findings of the investigation, and also the summary of the evidence and conclusion about the loss suffered due to the fraud. It should also include the plan of the fraud itself, and how it unfolded, basically the whole trail of events, and suggestions to prevent such fraud in the future.

Step 5 – Court Proceedings

The last stage expands over those audits that lead to legal proceedings. Here the auditors will give litigation

support to the Company/Regulators. The auditors are called to Court, and also included in the advocacy process. The understanding here is that they are called in because of their skill and expertise in commercial issues and their legal process. It is important that they lay down the facts and findings in an understandable and objective manner for everyone to comprehend so that the desired action can be taken up. They need to simplify the complex accounting processes and issues for others to understand the evidence and its implications.

FORENSIC AUDIT REPORT

Forensic Audit Report is statement of observation gathered & considered while proving conclusive evidence. It is a medium through which an auditor expresses his opinion under audit after the forensic audit investigation is completed.

Illustrative table of contents of a Forensic Audit Report include the following points:

1. Executive Summary
2. Origin of the audit
3. Audit Objective
4. Proposed Audit Outputs
5. Audit Implementation approach
6. Risk Analysis
7. Internal Environment Risk: Customers, product and Competitors; Financial Management; Human Resource Management; Information Technology; Business processes
8. External Environment Risk: Economy and market situation; political and legal scenario; Technology in the sector
9. Audit Process
10. Preliminary understanding of scope and incident coverage
11. Collect evidence
12. Conduct Interviews
13. Analyse findings
14. Validate inferences and conclusions
15. Evidence of risk events
16. Conflicts of interest; Bribery; Extortion; Theft; Fraudulent transactions; inventory frauds; misuse of assets; financial statement frauds
17. Audit recommendations
18. Logical framework approach
19. Preconditions and risks
20. Governance on recommendation implementation
21. Stakeholders
22. Budget considerations

SOCIAL AUDIT

A social audit is a way of measuring, understanding, reporting and ultimately improving an organization's social and ethical performance. A social audit helps to narrow gaps between vision/goal and reality, between efficiency and effectiveness. It is a technique to understand, measure, verify, report on and to improve the social performance of the organization.

Social auditing creates an impact upon governance. It values the voice of stakeholders, including marginalized/poor groups whose voices are rarely heard. Social auditing is taken up for the purpose of enhancing local governance, particularly for strengthening accountability and transparency in local bodies.

Social audit is a process of reviewing official records and determining whether state reported expenditures reflect the actual money spent on the ground. A social audit is a formal review of a company's endeavors in social responsibility.

The key difference between development and social audit is that a social audit focuses on the neglected issue of social impacts, while a development audit has a broader focus including environment and economic issues, such as the efficiency of a project or programme.

A social audit is an official evaluation of an organization's involvement in social responsibility projects or endeavors. For example, a local family store makes a clothing donation to a local church that has a homeless shelter for women and children. The store makes a similar donation three times a year. This is something that a social audit might uncover. Factors examined by a social audit include records of charitable contributions, volunteer events, efficient utilization of energy, transparency, work environment, and employees' wages.

Implications of Social Audit

- Social auditing creates an impact upon governance. It values the voice of stakeholders, including marginalized/poor groups whose voices are rarely heard.
- Social auditing is taken up for the purpose of enhancing local governance, particularly for strengthening accountability and transparency in local bodies.
- Social Audit makes it sure that in democracy, the powers of decision makers should be used as far as possible with the consent and understanding of all concerned.

Objectives of Social audit

1. Assessing the physical and financial gaps between needs and resources available for local development.
2. Creating awareness among beneficiaries and providers of local social and productive services.
3. Increasing efficacy and effectiveness of local development programmes.
4. Scrutiny of various policy decisions, keeping in view stakeholder interests and priorities, particularly of rural poor.
5. Estimation of the opportunity cost for stakeholders of not getting timely access to public services.
6. Provision of information needed to improve the effectiveness of programs designed to enhance community development.

To be effective, the social auditor must have the right to:

1. seek clarifications from the implementing agency about any decision-making, activity, scheme, income and expenditure incurred by the agency;
2. consider and scrutinize existing schemes and local activities of the agency; and

3. access registers and documents relating to all development activities undertaken by the implementing agency or by any other government department.

This requires transparency in the decision-making and activities of the implementing agencies. In a way, social audit includes measures for enhancing transparency by enforcing the right to information in the planning and implementation of local development activities

A social audit looks at factors such as a company's record of charitable giving, volunteer activity, energy use, transparency, work environment, and worker pay and benefits to evaluate what kind of social and environmental impact a company is having in the locations where it operates

SOCIAL AUDIT- COVERAGE

A social audit examines issues regarding internal practices or policies and how they affect the identified society. The activities included tend to pertain to the concepts of social responsibility. This can include activities affecting the financial stability of a region, any environmental impact resulting from standard operations and issues of transparency in reporting.

There is no standard regarding what must be considered as the society during the audit. This allows a business to expand or contract the scope based on its goals. While one company may wish to understand the impact it has on a small-scale society, such as a particular city, others may choose to expand the range to include an entire state, country or the world as a whole.

Use of Social Audit Findings

As a social audit is completely voluntary, the results of the audit are not required to be released to the general public or any regulatory agency. While positive results may be voluntarily disclosed, negative results may be kept internal and used to identify potential improvements that can make the results of the next social audit more favorable. For example, if a company found that the examined society did not believe it was adequately involved in charitable activities within the community, the company might choose to increase efforts in this area in the hopes of improving public perception.

Implementation of Social Audit

1. **Empowerment of people:** Social audit is most effective when the actual beneficiaries of an activity are involved in it. However, people can only get involved in the process when they are given appropriate authority and rights. To this end, the 73rd amendment of the constitution has empowered the Gram Sabha to conduct social audit. This is relevant only in the villages. In the cities, the Right to Information Act empowers the people to inspect public records.
2. **Proper Documentation:** Everything right from the requirement gathering to planning to implementation must be properly documented. Some of the documents that should be made mandatory are:
 - Applications, tenders, and proposals.
 - Financial statements, income - expense statements.
 - Registers of workers
 - Inspection reports.
3. **Accessibility of Documents:** Merely generating documents is useless if they are not easily accessible. In this information age, all the documents must be put on line.
4. **Punitive Action:** The final and most important provision, about which nothing is being done yet is to have punitive actions for non-conformance of the process of social audit. Unless there is legal punishment, there will be no incentive for the people in authority to implement the processes in a fair manner.

Steps for Social Audit

- Clarity of purpose and goal of the local elected body.
- Identify stakeholders with a focus on their specific roles and duties. Social auditing aims to ensure a say for all stakeholders. It is particularly important that marginalized social groups, which are normally excluded, have a say on local development issues and activities and have their views on the actual performance of local elected bodies.
- Definition of performance indicators which must be understood and accepted by all. Indicator data must be collected by stakeholders on a regular basis.
- Regular meetings to review and discuss data/information on performance indicators.
- Follow-up of social audit meeting with the panchayat body reviewing stakeholders' actions, activities and viewpoints, making commitments on changes and agreeing on future action as recommended by the stakeholders.
- Establishment of a group of trusted local people including elderly people, teachers and others who are committed and independent, to be involved in the verification and to judge if the decisions based upon social audit have been implemented.
- The findings of the social audit should be shared with all local stakeholders. This encourages transparency and accountability. A report of the social audit meeting should be distributed for Gram Panchayat auditing. In addition, key decisions should be written on walls and boards and communicated orally.

Checklist on Social Audit

- Whether the company has well defined policies for development of the society especially the poor and rural people?
- Whether on regular basis the scrutiny of fulfillment of the policy is done?
- Whether the physical and financial gaps between needs and resources available for local development are assessed on regular intervals?
- Whether the voice of the minority shareholders are considered?
- Are necessary actions taken over them?

LESSON ROUNDUP

- Audit of corporate governance processes provides assurance to the various stakeholders that all the required governance activities have been accomplished and which governance norms has not been satisfied by the company for assisting stakeholders in making an informed decision.
- Corporate Social Responsibility (CSR) audit help in measuring the actual social performance against the social objectives set by the Company.
- According to Section 2(a) of the Environmental Protection Act, 1986, 'Environment' includes a) Water, air and land b) The inter-relationship which exists among and between, (i) water, air, land, and (ii) human beings, other living creatures, plants, microorganisms and property.
- Forensic Audit is a dynamic and strategic tool in combating corruption, financial crimes and frauds through investigations and resolving allegations of fraud and embezzlement.
- A fraud triangle is a tool used in forensic auditing that explains three interrelated elements that assist the commission of fraud- Pressure (motive), opportunity (ability to carry out the fraud) and rationalization (justification of dishonest intentions).

- A social audit is a way of measuring, understanding, reporting and ultimately improving an organization's social and ethical performance. A social audit helps to narrow gaps between vision/goal and reality, between efficiency and effectiveness.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Comment on the close relationship between Corporate Governance and SEBI (LODR) Regulations & Companies Act, 2013.
2. What is the purpose of CSR Audit?
3. Discuss the scope of Takeover Audit.
4. Discuss the scope and benefits of Industrial and Labour Audit.
5. What is Cyber Audit and write down its objectives?
6. Discuss the current scenario of Environment Laws in India.
7. Describe the System audit controls evaluation process
8. Forensic audit is unlike other audits. Comment.
9. Discuss the steps involved in Social Audit.

[illegible]

Lesson 12

Audit Engagement

LESSON OUTLINE

- Meaning of Audit Engagement
- Appointing Authority
- Audit Fees and Expenses
- Independence and conflict of Interest
- Confidentiality
- Audit Engagement Letter
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The statutory auditors of the company are appointed by the members of the company, through a resolution passed at the annual general meeting of the company. However, In case of other audit the auditors are appointed by the board of the company or by the person authorized by the board of the company, by the tribunal/ courts, Company liquidators etc.

Further, the Appointment of such auditor are not through the any statue and hence the Companies are having liberty to set their own process for the engagement of the auditors through a direct engagement or through inviting the tenders for the engagements of the auditors.

By reading this lesson the student will aware about the various requirement of laws and the point which should be considered while taking up the audit engagement by any professional.

MEANING OF AUDIT ENGAGEMENT

An audit engagement is an arrangement wherein an auditor perform an audit of the transaction of the auditee for which he has been engaged by the auditee. The audit engagement is a contractual arrangement by way of the Audit Engagement letter between the auditee and the auditor.

Offer and acceptance of the Audit Engagement

The offer for the audit engagement may be initiated either by the Auditee or by the auditor. However it is necessary that the engagement are accepted by the auditors and the auditor fulfills the various criteria for acting as an auditor prescribed in the various applicable laws. For example in case of the statutory audit the auditor shall fulfill the eligibility criteria as prescribed under section 141 of the Companies Act, 2013.

An auditor may be appointed either as a result of one to one communication between the auditor and the Management or through a tendering process followed by the Management.

In case the auditor is to be appointed by the management on one to one basis, following steps should be taken care by the auditor:

- Selection or screening of prospective auditee based on following risk / assessment:
 - Client acceptance and engagement risk e.g. highly leveraged client, habitually litigant client, in the media for wrong reason, pledging of shares by the promoter group, PE involvement.
 - Performance Risk – capacity, resources etc.
 - Engagement Contract Risk
 - Reputation Risk
 - Commercials
- Communicating his willingness to take up the audit assignment.
- Conducting a pre- engagement meeting with the management to discuss about the terms of engagement, prior year audit results, appropriateness of reporting framework, understanding business and environment including internal control system, design & operation, audit process, periodicity of audit , determining nature and conflict of interest etc.
- Signing the engagement letter with the Management.

In case where the appointment of auditor is through a tendering process by the management, following steps should be taken care by the auditor:

- Pre-bid meeting with the management to discuss upon various aspects of the tender, scope of work terms of engagement, prior year audit results, appropriateness of reporting framework, understanding business and environment including internal control system, design & operation, audit process, periodicity of audit determining nature and conflict of interest etc.
- Submission of technical bid as per the requirements of the tender document of the management.
- Signing the engagement letter with the management.

APPOINTING AUTHORITY

The appointing authority means the person who is appointing the Auditors of the company. Under the provision of the Section 139 of the Companies Act, 2013 specifically provides that the appointment of the first statutory auditor shall be appointed by the board of the company within 30 days of the incorporation of the company, however the subsequent auditors shall be appointed upon the recommendation of the board or the audit

committee of the company, if any, by the members at the general meeting of the company.

Whereas, in case of the secretarial audit under section 204 of the Companies Act, 2013, the section provides for the appointment of the practicing company secretary as secretarial auditors and shall be appointed by the board of the company.

In case of the appointment of Internal Audit under section 138 of the Companies Act, 2013, the internal auditor can be appointed by the board to conduct internal audit of the function and activities of the company. It may be noted that the internal auditor may or may not be the employee of the company.

In case where the tribunal/ official liquidator by exercising his power, appointed the auditor, the tribunal/ official liquidator is considered as the appointing authority.

In case where the law specifically provides for the appointing authority and the appointing authority may authorize such person to sign the engagement letter, however instances where the law has not provided, the person who signs the engagement letter in official capacity can be considered as the appointing authority.

Communication to Previous Auditor

As a measure of the professional etiquettes, while taking up the any audit engagement, the auditors shall give intimation to the previous auditor, intimating his engagement as auditors of the company. The term predecessor or previous auditor can be defined as an auditor who has conducted the most recent audit assignment of the Auditee of the same nature and submitted report thereon prior to the incumbent auditor or was engaged but did not complete the audit assignment due to his resignation, termination or otherwise.

In case whenever a practicing company secretary is appointed as secretarial auditor in place of the existing secretarial auditor, he should communicate 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.

Terms and Conditions of Audit engagement

The objective and scope of every audit is dependent on the four corners of the terms and conditions which also include the scope of audit as agreed by and between the auditee and the auditors of the company. This requires the specific attention of the auditors and auditee on the following points:

- The objective and purpose of the audit
- The responsibilities of the auditor
- The responsibilities of management/ Auditee
- The audit risk
- The audit limitation
- The audit plan

This is essential that the auditor as well as the auditee should agree upon the terms of audit engagement and documented the same in the audit engagement letter or other suitable form of written agreement which can be referred on any conflict arising during the course of audit.

In case of instances where due to change in the governing laws the amended law should be considered in the performance on the audit, however, any request in the change of the terms of audit engagement should be considered by the auditor on its merit and shall be properly documented by the auditors.

AUDIT FEE & EXPENSES

Audit fee which is to be charge by the auditor depends on several factors, which includes:

- Size of the organization;
- Nature of business ;
- Internal Controls systems & Technology adopted ;
- Scope of audit;
- Frequency of audit etc.

Audit fees should be a fair reflection of the value of the work performed for the auditee, taking into account the above mentioned factors. However, the Audit services should not be offered or rendered under an arrangement whereby no fee will be charged unless specified findings or results are obtained, or where the fee is otherwise contingent upon the findings or results of such services, and fees should not be regarded as being contingent if fixed by a court or other public authority. Also the charge or accept a fee for professional work on a percentage basis is not advisable except where that course is authorized by statute or has been approved by a member body as generally accepted practice for certain work.

Auditors should not accept a very low level of fee as a result of competing for business. Also not to enter in to price competition and deplored in the profession, as it could impair the auditors' independence and deteriorate the quality of the auditing service. However, charging a lower fee than has previously been charged by another auditor for similar work is not restricted in any law.

In case of Statutory Auditors, Section 142 of the Companies Act, 2013 provides that the remuneration to the Auditors shall be fixed in the general meeting of the company, also the auditor can claim the expenses incurred by him in connection with the audit of the company.

Similarly, In case of the Secretarial Audit and the Internal Audit, the Audit fee shall be decided by the Audit committee or by the board of the company.

INDEPENDENCE AND CONFLICT OF INTEREST

As the audit refers to the independent verification and it is most important to maintain the Independence of the Auditor and to avoid such conflict of Interest of the Auditors.

Section 141(3) of the Companies Act, 2013 provides for the eligibility criteria for the appointment of an auditor and section 149(6) of the Companies Act, 2013 provides for the eligibility criteria of independence, a combination of both of provisions may be considered as the guiding criteria for the auditors independence. Following are certain examples where an auditor shall assumed to have interested in the auditee's business or enterprise:

1. Holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
2. Indebtedness to the company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
3. Has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
4. Having business relationship (direct or indirect) with the company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
5. Any relative of the auditor is a director or is in employment of the company as a director or key managerial personnel.

The Company Secretaries Act, 1980 (the Second Schedule, Part I, paragraph 4) makes it an act of misconduct for a Company Secretary to express an opinion on any report or statement of a business or enterprise in which he or his firm or a partner of his firm has a substantial interest, unless he discloses the interest also in his report. Such restriction will put the stakeholders on guard against any possibility of an impairment of the independence of the professional signing the report.

The Act does not define the phrase “substantial interest”. This is just as well as it has to be left to the judgment and discretion of the professional to determine the extent of interest which would affect his independence. He would be well advised to satisfy himself that the decision in this regard is such as would be taken as reasonable by an objective third party in the circumstances of the case. The professional must take care to see that he does not get into situations where there could be a conflict of interest and duty.

A practicing professional in public practice may be faced with a conflict of interest when performing a professional service. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- The professional provides a professional service related to a particular matter for two or more clients whose interests with respect to that matter are in conflict; or
- The interests of the professional with respect to a particular matter and the interests of the client for whom the professional provides a professional service related to that matter are in conflict.

An auditor shall not allow a conflict of interest to compromise professional judgment. Examples of situations in which conflicts of interest may arise include:

- (i) Providing a transaction advisory service to a client seeking to acquire an audit client of the firm, where the firm has obtained confidential information during the course of the audit that may be relevant to the transaction.
- (ii) Auditing two clients at the same time who are competing to acquire the same company where the audit report might be relevant to the parties’ competitive positions.
- (iii) Taking audit assignment of two clients regarding the same matter, who are in a legal dispute with each other.
- (iv) Providing an audit report for a licensor on royalties due under a license agreement when at the same time advising the licensee of the correctness of the amounts payable.

When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, the auditor shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the auditor at the time, would be likely to conclude that compliance with the fundamental principles is not compromised.

When addressing conflicts of interest, including making disclosures or sharing information within the firm or network and seeking guidance of third parties, the auditor shall remain alert to the fundamental principle of confidentiality.

If the threat created by a conflict of interest is not at an acceptable level, the auditor shall apply safeguards to eliminate the threat or reduce it to an acceptable level. If safeguards cannot reduce the threat to an acceptable level, the auditor shall decline to perform the audit; or shall terminate relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.

Before accepting a new client relationship, engagement, or business relationship, an auditor shall take reasonable steps to identify circumstances that might create a conflict of interest, including identification of:

1. The nature of the relevant interests and relationships between the parties involved; and

2. The nature of the service and its implication for relevant parties.

CONFIDENTIALITY

The Auditors of a company while performing the audit assignment access the various confidential information of the company and it is most required for the auditors to maintain the confidentiality of the auditee information. The principle of confidentiality imposes an obligation on the auditor to refrain from:

- Disclosing information acquired as a result of professional relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
- Using information acquired as a result of professional relationships to their personal advantage or the advantage of third parties.
- An auditor should maintain confidentiality even in a social environment. The auditor should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a relative.
- An auditor should also maintain confidentiality of information disclosed by a prospective client or employer.
- An auditor should also consider the need to maintain confidentiality of information within the firm or employing organization.
- An auditor should take all reasonable steps to ensure that staff under the auditor's control and persons from whom advice and assistance is obtained respect the auditor's duty of confidentiality.

Preconditions of accepting/continuing any professional engagement

Prior to acceptance of any Audit engagement, the auditor, in order to establish whether the preconditions for accepting professional assignment are present, the auditor should check that:

- (a) Whether the reporting framework as required in the preparation, performance of audit, review of the secretarial/ non-financial statements is acceptable; and
- (b) Whether the management is in agreement to acknowledge and understands its responsibility relating to:
 - (i) Preparation of the secretarial/ non-financial statements in accordance with the applicable reporting framework, including their fair presentation;
 - (ii) Development of internal control/systems/procedure to enable the preparation of secretarial/ non-financial statements which are free from material misstatement, whether due to fraud or error; and
 - (iii) Providing:
 - a. Access to all information of which management is aware that is relevant to the preparation/ audit/review etc. of the secretarial/ non-financial statements such as records, documentation and other matters;
 - b. Additional information that the auditor may request from management for the relevant purpose; and
 - c. Unrestricted access to persons within the company from whom the auditor determines it necessary to obtain audit evidence.

Limitation on scope prior to Engagement Acceptance

If management or appointing authority impose a limitation on the scope of the auditor's work in the terms of a

proposed audit engagement such that the auditor believes the limitation will result in the auditor disclaiming an opinion on the Secretarial records/non-financial statements, the auditor shall not accept such a limited engagement as an audit engagement, unless required by law or regulation to do so.

Other factors affecting Engagement Acceptance

If the preconditions for an audit/professional assignment are not present, the auditor should discuss the matter with management. Unless required by law or regulation to do so, the auditor should not accept the proposed audit engagement:

- (a) If the auditor assesses that the reporting framework to be applied in the preparation of the secretarial records/non-financial statements is unacceptable, or
- (b) If the agreement has not been concluded.

Agreement on Engagement Terms

The auditor should agree upon the terms of engagement with the management or those charged with governance, as appropriate. The agreed terms of the engagement should be recorded in an engagement letter or other suitable form of written agreement and includes:

- (a) The objective and scope of engagement;
- (b) The responsibilities of the firm;
- (c) The responsibilities of management;
- (d) Identification of the applicable financial reporting framework; and
- (e) Reference to the expected form and content of any reports and a statement that there may be circumstances in which a report may differ from its expected form and content.

If any law or regulation prescribes sufficient detail of the terms of the engagement referred to above, there is no need to record them in a written agreement, except for the fact that such law or regulation applies and that management acknowledges and understands its responsibilities.

Criteria for declining and withdrawing from an Engagement

Based on the evaluation of client information and the following factors, the auditor should determine and document the conditions beyond which it would be prudent to decline, or withdraw from an engagement:

- (a) Client's status/information that is likely to impact adversely on the independence of the firm.
- (b) Ability of the firm to provide appropriate service to the client, considering needs for technical skills, knowledge of the industry and personnel.
- (c) Consider circumstances which would cause the firm to regard the engagement as one requiring special attention or presenting unusual risks.

Limits on Audit Engagements

An auditor shall not accept audit engagement beyond the limits of number of audits, if any, as may be specified under applicable laws or any other body governing such profession. Violation of the limits by the auditor may attract disciplinary actions against the auditor.

The fact that because of the inherent limitations of an audit, together with the inherent limitations of internal control, there is an unavoidable risk that some material misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the applicable auditing standard.

Internal control, no matter how effective, can provide an entity with only reasonable assurance about achieving the entity's reporting objectives or compliance objectives due to the inherent limitations of internal control. Such Internal control systems and processes are responsibility of the management.

An independent audit conducted in accordance with the applicable auditing standards does not act as a substitute for the maintenance of internal control mechanism in the organization. Accordingly, the auditor is required to obtain the agreement of management that it acknowledges and understands its responsibility for internal control. However, the agreement required does not imply that the auditor will find that internal control maintained by management has achieved its purpose or will be free of deficiencies.

Audit Engagement Letter

It is in interest of both the management and the auditor that the auditor should get an audit engagement letter before the commencement of the audit to help avoid misunderstandings with respect to the terms of engagement. In some entities, however, the objective and scope of an audit and the responsibilities of management and of the auditor may be sufficiently established by law, in that case, the engagement letter may give a reference to the fact that relevant law or regulation applies and that management acknowledges and understands its responsibilities for preparation and maintenance of records and for devising proper systems to ensure compliance with the provisions of applicable laws and regulations.

It should be reviewed every year to ensure that it is up to date but does not need to be reissued every year unless there are changes to the terms of the engagement. The auditor shall obtain a new engagement letter if the scope or context of the assignment changes after initial appointment.

Form and Content of Audit Engagement Letter

The form and content of audit engagement letter may vary for each audit engagement, but it would generally include reference to:

- Elaboration of the scope of audit, including reference to applicable legislation, regulations and ethical and other pronouncements of professional bodies to which the auditor adheres.
- The form of any other communication of results of the audit engagement.
- Arrangements regarding the planning and performance of the audit, including the composition of the audit team.
- Written representations to be provided by the management to the auditor.
- The agreement of management to make available to the auditor adequate records, reports and other information in time to allow the auditor to complete the audit in accordance with the proposed timetable.
- The agreement of management to inform the auditor of events occurring or facts discovered subsequent to the date of the financial statements, of which management may become aware, that may affect the status of compliance by the under any law.
- Period within which (with Milestones) audit report should be submitted by the auditor.
- Audit fees and any billing arrangements including out of pocket expenses for site visit etc.

When relevant, the following points also could be made in the audit engagement letter:

- Arrangements concerning the involvement of other auditors and specialists in some aspects of the audit Arrangements concerning the involvement of internal auditors and other staff of the entity.
- Arrangements to be made with the predecessor auditor, if any, in the case of an initial audit.
- Any restriction of the auditor's rights or duties when such possibility exists.

- Any obligations of the auditor to provide audit documentation to other parties.
- Additional services to be provided, such as those relating to regulatory requirements.
- A reference to any further agreements between the auditor and the entity.

In case of certain entities, such as, Central/State governments and related government entities, law or regulation governing the operations of that entity generally mandate the engagement of the auditor and commonly set out the auditor's responsibilities and powers, including the power to access an entity's records and other information. When law or regulation prescribes in sufficient detail the terms of the audit engagement, the auditor may not record them in a written agreement, except for the fact that such law or regulation applies and that management acknowledges and understands its responsibilities. However, the auditor may nonetheless consider that there are benefits in getting a fuller audit engagement letter.

When the auditor of a parent entity is also the auditor of a component, the factors that influence the decision whether to get a separate audit engagement from the component include the following:

- Who appoints the component auditor;
- Whether a separate auditor's report is to be issued on the component;
- Legal requirements in relation to audit engagements;
- Degree of ownership by parent ;and
- Degree of independence of the component management from the parent entity.

Model Audit Engagement Letter

To,

ABC Associates (name of Audit firm)

Company Secretaries

(Address)

Dear Sir,

This engagement letter is provided in connection with your audit of the Secretarial Records of XYZ co. Ltd. Scope of work of Secretarial Audit to be conducted for the F.Y. 20__ - 20__ are as follows:

Secretarial Auditor has to check compliances by the company under the following laws and rules made thereunder;

- i. The Companies Act, 2013 (the Act) and the rules made there-under;
- 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 there-under;
- 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, 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 Based Share Benefit Scheme) 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;
- vi. Other laws as may be applicable specifically to the company.

II. Secretarial Standards & Listing Regulations:

- (i) Secretarial Standards 1 & 2 issued by The Institute of Company Secretaries of India;
- (ii) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, if applicable.

III. Composition of Board of Directors/ Minutes of Board & Committee Meetings & General Meetings

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.

IV. Adequate Systems and Processes in the Company

Secretarial Auditor also requires to report on whether 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.

V. Details of specific events / actions having a major bearing on the company's affairs

Secretarial Auditor also requires to report on details of specific events / actions having a major bearing on the company's affairs in pursuance of the laws applicable on the Company during the audit period the company.

Documents to be examined/verified while conducting Secretarial Audit (these points are inclusive and not exhaustive):

- (i) Books , Papers, as per Section 2 (12) of Companies Act, 2013, "book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.
- (ii) Memorandum of Association
- (iii) Articles of Association
- (iv) Certificate of Incorporation
- (v) Audited balance sheet(s).

- (vi) Statutory Registers maintained by the Company i.e., Register of Members/ Register of debenture holder/ Register of Charges/ Register of Directors and Key Managerial Personnel/ Register of Loans, Guarantee, Security etc.
- (vii) Details of E-forms filed during the period.
- (viii) Notice of calling Board Meetings.
- (ix) Notice of calling Extra Ordinary General meeting, Annual General Meeting along with the explanatory statement.
- (x) Minutes of the Board meetings, Extra Ordinary General meeting, Annual General Meeting, Audit Committee Meetings, Nomination & Remuneration Committee Meetings, etc.
- (xi) Notices of disclosure of directors' interests in Form No. MBP-1 as well as specific notices received from time to time from the directors and recorded in the minutes of Board meetings.
- (xii) Copy of documents related to the appointment/Resignation of Statutory Auditor of the company.
- (xiii) Copies of contracts made between the company and any of the related parties u/s section 188 of Act.
- (xiv) Details of inter-corporate investments/loans/guarantees/securities etc.
- (xv) Copy of Internal Audit Report given by Internal Auditor appointed u/s 138 of Companies Act, 2013.
- (xvi) For Companies having Foreign Direct Investment
 - a) Copy of Foreign Inward Remittance Certificate.
 - b) Copy of Form FC-GPR.
 - c) Copy of Annual return on Foreign Liabilities & Assets (FLA).
 - d) Certificates received from Company Secretary and Chartered Accountant.
 - e) Copy of approval Reserve Bank of India/ Foreign Investment Promotion Board.

Further, the Secretarial Auditor shall review and periodically update (if required) the checklist based Compliance Monitoring System.

For XYZ Limited

Date

Place

Authorised signatory

Model Engagement Agreement

On this _____ day of _____, _____,

Auditor: _____ Auditor Mailing

Address: _____ Hereinafter

referred to as The Auditor and _____

(Board (s)) of _____: hereinafter referred to as

The "Company", agree as follows:

1. The Auditor shall audit all records and disclosures as contemplated by Secretarial Standards and additional documents required legal statements and disclosures of the Company for the period beginning _____, _____, and ending _____, _____.

2. At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with Secretarial Audit standards. The Auditor shall perform the audit as required by the Companies Act, 2013. If the audit and/or work papers are found in this review to be substandard, the results of the review may be forwarded to the Central Govt.
3. If an entity is determined to be a component of another company the auditor will make a good faith effort to comply in a timely manner with the requests of the group auditor.
4. This contract contemplates an unqualified opinion being rendered. The audit shall include such tests of the records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.
5. If this audit engagement is subject to the standards for audit as defined by ICSI, then by accepting this engagement, the Auditor warrants that he has met the requirements for a peer review and continuing education as specified by ICSI. The Auditor agrees to provide a copy of their most recent peer review report regardless of the date of the prior peer review report to the Company.
6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to the Company within four months of fiscal year end. Audit report is due on: _____, _____. If it becomes necessary to amend this due date or the audit fee, an amended contract along with a written explanation of the delay must be submitted to the Board for approval.
7. In consideration of the satisfactory performance of the provisions of this contract, the Company shall pay to the Auditor, upon approval by the Board, the following fee, which includes any cost the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties.

Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the total of the stated fees above.

If the current contracted fee is not fixed in total, invoices for services rendered may be approved for up to 75% of the prior year audit fee.

8. After completing the audit, the Auditor shall submit to the members a written report of audit. This report shall include but not be limited to the following information:

Management's Discussion and Analysis,

- a. the financial statements and notes of the Company and all of its component units,
 - b. supplementary information requested by the client or required for full disclosure under the law, and
 - c. the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Board as soon as practical after the close of the accounting period.
9. The circumstances disclosed by the auditor which call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the Board, this contract may be varied or changed to include the increased time and/or compensation as may be agreed upon by the Board and the Auditor.
 10. If an approved contract needs to be varied or changed for any reason, the change must be made in

writing, signed and dated by all parties and pre-audited if the change includes a change in audit fee. This document and a written explanation of the change must be submitted by email in PDF format to the Board for approval.

11. The audit should not be started before the contract is approved.
12. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Board.
13. All of the above paragraphs are understood and shall apply to this contract. Communication regarding audit contract requests for modification or official approvals will be sent to the addresses provided in the spaces below.

Company Signatures:

Audit Firm Signature:

Name of Audit Firm _____

Authorized Audit firm representative name:

Signature of authorized audit firm representative

Email Address of Audit Firm:

Date _____

LESSON ROUND UP

- The audit engagement may be initiated either by the Auditee or by the auditor. However it is necessary that the engagement is accepted by the auditors.
- The auditor may be appointed by the management on one to one basis, or through a tendering process by the management.
- In case where the practicing company secretary is appointed as Secretarial Auditor in place of the existing Secretarial Auditor, he should communicate 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.
- A conflict of interest creates a threat to objectivity of the audit and may create threats to the other fundamental principles, hence the auditor should maintain his Independence or avoid such situation of conflict of Interest.
- The principle of confidentiality imposes an obligation on the auditors to maintain confidentiality of the auditee information.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. In the Audit engagement process the acceptance of the Audit Engagement by the professional is mandatory, Comment.
2. Describe the provisions relating to the Appointment of Statutory auditor, secretarial Auditor, cost Auditor and Internal Auditor.
3. Write the examples where an auditor is assumed to have interested in the auditee's business or enterprise.
4. Draft an Audit engagement letter for the Secretarial Auditor.
5. What is the meaning of Confidentiality, Why it is necessary for the auditor to maintain confidentiality.

Lesson 13

Audit Principles and Techniques

LESSON OUTLINE

- Introduction
- Audit Planning
- Risk Assessment
- Collection of Information
- Audit Checklist
- Auditing Techniques
- Compliance Test of Internal Control System
- Collection of Audit Evidence
- Creation of Audit Trails
- Materiality
- Record Keeping
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The Audit principles are the generally accepted rules which are commonly applicable for the every type of Audit, whereas the audit techniques stand for the methods that are adopted by an auditor to obtain audit evidence and performance of the Audit as per the scope of the audit. An auditor can apply various techniques of auditing which may be applied by the auditor under different circumstances of audit.

After reading this lesson the student is able to understand the various Audit principles and the various techniques which can be applied while the performance of the audit.

INTRODUCTION

The auditing principles defines governing an audit and includes the professional responsibilities, which should be observed by the auditor while carrying out any audit assignments, Some of these principle are as under:

Integrity objectivity and independence: An auditor should be honest, sincere, impartial and free from bias. He should be a man of high integrity and objectivity.

Confidentiality: The auditor should respect confidentiality of information acquired during the course of his work and should not disclose the information without the prior permission of the client, unless there is a legal duty to disclose.

Skill and competence: The auditor must acquire adequate training and experience. He should be competent, skillful and keep himself abreast of the latest developments including various pronouncements.

Work performed by others: If the auditor delegates some work to others and uses work performed by others including that of an expert, he continues to be responsible for forming and expressing his opinion on the financial information.

Documentation: The auditor should document matters which are important in providing evidence to ensure that the audit was carried out in accordance with the basic principles.

Planning: The auditor should plan his work to enable him to conduct the audit in an effective, efficient and timely manner. He should acquire knowledge of client's accounting system, the extent of reliance that could be placed on internal control and coordinate the work to be performed.

Audit evidence: The auditor should obtain sufficient appropriate evidences through the performance of compliance and other substantive procedures to enable him to draw reasonable conclusions to form an opinion on the financial information.

Accounting System and Internal Control: The management is responsible for maintaining an adequate accounting system incorporating various internal controls appropriate to the size and nature of business. The auditor should assure himself that the company's internal control system is adequate and all the information which should be recorded has been recorded.

Audit conclusions and reporting: On the basis of the audit evidence, the auditor should review and assess the audit conclusions. The auditor should ascertain:

- As whether the policies have been consistently applied;
- Whether the information complies with regulations and statutory requirements; and
- There is adequate disclosure of material matters relevant to the presentation of information subject to statutory requirements.

The auditor's report should contain a clear written opinion on the subject matter. A clean audit report indicates the auditor's satisfaction in all respects and when a qualified, adverse or a disclaimer of opinion is to be given or reservation of opinion on any matter is to be made, the audit report should state the reasons thereof.

In case of statutory audit, the main object of audit is to find out whether the financial statements prepared by a company show the true and fair view of the financial state of affairs of a company and if not then in what respect they are not showing. However in case of the Non-financial audit, the auditor is expected to report on the compliance status of the company on the various applicable laws on the company.

Auditing Techniques

The Audit techniques stand for the methods that are adopted by an auditor to obtain audit evidence and performance of the Audit as per the scope of the audit. An auditor can apply various techniques of auditing

which may be applied by the auditor under different circumstances of audit, the various techniques of the audit are summarised as under:

1. Inspection of the Documents and records:

While verifying various transactions, the auditor examines the supporting documents and records. This technique is otherwise called vouching. The purpose of examining the documents and records is to confirm the authenticity (genuineness) of the transaction and

- to find whether the transactions and the supporting document are appropriate.
- to ensure whether the transactions are authorized (approved).
- to ensure whether the classification of the transaction is proper.

While the scrutiny of documents, the auditor comes across the various records and documents and if he comes across any unusual transactions, he verifies the same thoroughly. This is called scanning of records, which requires experience and expertise. The auditor can rely on the documents depends on the origin (source) of the documents and the efficiency of the internal control system in operation, also the written confirmation of the management of the company could be considered in case the supporting documents are not available .

Documents which have their origin in the hands of the third parties and held by third parties are more reliable than the documents which have their origin in the organization itself and held by the organization. One can classify the documents into four major categories according to their origin and availability.

1. Documents which have their origin in the hands of the third party and held by them – **Most reliable evidence.**
2. Documents which have their origin in the hands of the third party and held by the organization – **More reliable.**
3. Documents which have their origin in the hands of the organization and held by the third party – **Reliable.**
4. Documents which have the origin in the hands of the organization and held by the organization – **Reliable only if the internal control is effective.**

Physical Verification

If an item can be measured in physical term, the same may be verified for quantity and quality (if possible). By physical examination, the auditor ensures the availability of the item. However, the ownership of the items cannot be verified through this method.

2. Observation

The auditor observes a particular procedure being carried by the organization. Examples are observation of the internal control measures that are adopted in transactions involving cash, procedures followed on receipt or issue of material, etc. The auditor makes his observations to evaluate the efficiency and effectiveness of the system followed by the organization.

3. Inquiry and Confirmation

Inquiry: Seeking information from persons belonging to the organization or from outside organization is called inquiry.

Confirmation: Confirming the information available with the records of the organization or with the persons mostly from outside the organization through an inquiry is confirmation.

Inquiry and confirmation can take place either orally or in writing. The best example for inquiry and confirmation is confirming the balances of debtors shown in the accounting records with the debtors of the organization.

4. Computation

An auditor makes appropriate calculations and verifies the accuracy of the accounting records. For example, the auditor computes the depreciation to be charged for the year, by taking into consideration the value of the asset (cost), the date of purchase, the rate of depreciation, etc., to verify the accuracy of the depreciation charged by the organization. The auditor also traces a particular transaction from the origin to check the book keeping procedure.

5. Analytical Procedures

The purpose of analysis is to ensure consistency of accounting methods and also to evaluate the efficiency of the management by comparing the results of several years. The several analytical procedures are Reconciliation, Ratio Analysis; and Variance Analysis. The auditor also applies the analytical procedures to help the management in decision making. Such analytical techniques are Marginal Costing, Standard costing etc.

The auditor studies the nature of the business and also the prevailing circumstances and selects the techniques to be applied. While conducting the audit, he may change his technique according to the changes observed in the circumstances. The suitable audit techniques adopted by the auditor helps him to carry on the audit efficiently.

Audit Planning

The Audit plan, describes the processes and activities that are to be carried out in connection with a particular audit and for the improving the quality of audit. Accordingly, an auditor should plan an audit so that it is performed in an effective manner within the defined scope. The audit planning should also include overall audit strategy for the audit.

For an effective audit the availability of resources and skilled manpower is required and sometimes the availability of skilled team members is become a constraint in cases where the auditor does not have the in-house experts for such audit. The demand for resources also exceeds the availability in majority of cases. Hence, the audit firm needs to carefully form an audit team or assign the professional assignments to the audit team so that the adequate staff in terms of manpower and required skill can be deployed on the audit assignment.

While framing the audit plan, it is required to focus on the availability of skilled audit staff, the time frame for audit performance and completion, the nature and complexities involved, risk assessments and the audit tests to address to those risks.

The process of audit planning should include the following elements:

1. The purpose and objectives
2. Legal framework under which the audit is being conducted
3. Significant areas and issues involved
4. Process and technique to be adopted
5. Check points activities
6. Allocation of work contents amongst the staff
7. Time schedules for completion of various tasks/ phases
8. Determining time lines for submission of draft report, discussion thereon with the auditee and submission of final report

9. Areas to be classified on “Risk” criteria to allocate suitable resources
10. Determining the extent of detailed examination and coverage in terms of volume
11. Evaluation of internal controls and professional work carried out by other agencies / experts and placing reliance thereon
12. Materiality considerations and determining the threshold therefore
13. Structure, contents of the report.

Essentials of Audit Planning

The Audit planning helps to develop an audit approach which will ensure that sufficient appropriate evidence is gathered to support the audit opinion in the most cost effective manner. For a successful audit plan, the following points should be considered by auditor:

- The Audit should be planned in such manner, which ensures the high quality of audit in economic, efficient, and effective way and in a timely manner.
- The Audit plan should be documented and should be kept with the audit working papers.
- The Inter related steps and events should be clubbed together.
- The elements of an audit plan may be similar for different auditee entities. However, the actual contents may differ from auditee to auditee enterprise, and on nature, type & objective of the audit or authentication assignment.
- The audit plan should be reviewed by the experienced auditor, normally not engaged on the assignment. Their experience may be useful to modify the audit plan to meet the audit objectives more vigorously.
- The audit plan should be flexible enough to accommodate modifications which may be necessary and should be carried out with the approval of team leader.
- Auditing involves the collection and analysis of facts and data sufficient to reach reliable and valid conclusions about the subject of the audit.
- The Auditing staff should be made familiar of the quality control policies and procedures of the firm. The hierarchy, responsibility & authority for decision making needs to be clearly defined and understood by the audit staff.
- The Audit plan includes the nature, timing and extent of audit procedures to be performed by audit teams. Sometimes audit plan requires modification based on revised consideration of assessed risks. e.g., Auditor gets some information during the course of audit which differs significantly from the information available when the auditor planned the audit procedure.

Risk Assessment

Auditing risk means that an auditor accepts / presumes some level of uncertainty in performing the audit work, which means that the auditor accepts the risk that the audit opinion given by the auditor might be wrong. Only a very small degree of audit risk would be acceptable as otherwise the audit process may lose its purpose.

The audit risk has three components:

Inherent Risk: Inherent risk is the susceptibility of a class of transaction to misstatement that could be material, individually or when aggregated with misstatements in other transaction, assuming that there were no related internal controls. For example, Genuineness of the related party transactions.

Control Risk: Control Risk is the risk that a misstatement that could occur in an class of transactions and that

could be material individually or when aggregated with misstatement on other transaction, will not be prevented or detected and corrected on a timely basis by the internal control systems. For example, delay in the filing of forms.

Detection Risk: Detection Risk is the risk that an auditor's substantive audit procedures will not detect a misstatement that exist in class of transactions that could be material, individually or when aggregated with misstatement on other transaction. For example, while certification of e-form, the auditor has overlooked the compliance of the Secretarial Standards.

The auditor should maintain the high level of the assurance/confidence while expressing the audit opinion, and this is the most important steps in the audit planning to ensure that the audit team will gather competent, relevant and reasonable audit evidence at minimum cost.

There is an inverse relationship between materiality and the level of audit risk, that is, the higher the materiality level, the lower the audit risk and vice versa, Auditor should take note of the inverse relationship between materiality and audit risk when determining the nature, timing and extent of audit procedures.

COLLECTION OF INFORMATION/RECORDS OF AUDITEE

Before going for the audit planning, it is necessary for an auditor to have thorough understanding of the auditee entity and its operations, which helps in designing an efficient and effective audit approach so that the audit resources are focused on the areas of greatest risk and audit methods which meet audit objectives at minimum cost are adopted in obtaining competent, relevant and reasonable evidence to support the audit judgment and conclusions. The audit team should:

1. Familiarize itself with-
 - a. The operations and organisation of the auditee entity
 - b. The financial statement
 - c. The regulatory framework
 - d. The general legal framework governing the entity operations
2. Understand the accounting processes and the degree of the technology involvement
3. Access the overall control environment and in particular the control to prevent irregularity, illegality and fraud;
4. Perform preliminary analytical procedures
5. Analyze the financial statement in to account areas.

PREPARATION OF AUDIT CHECKLIST

The audit checklist assists auditors in conducting a thorough, systematic and consistent audit. The checklists are used to guide and help the auditor to assess whether evidence meets audit criteria.

It is important to remember that checklists are used to guide the auditor's and do not rigidly dictate exactly what is to be audited as in various event the auditor need to check beyond the checklist and the compliance requirement is different according to the nature and business of the company.

Accordingly, the audit checklists support the audit process in identification of the various compliance requirements and have their own benefits for the performance of the audit. Though for all organization a uniform checklist can be considered but same need to be customized as per the organization and the scope of the audit.

The benefits of the audit checklists are as under:

- a. Promote planning for the audit.

- b. Ensure a consistent audit approach.
- c. Act as a sampling plan and time manager.
- d. Serve as a memory aid.
- e. Provide a repository for notes collected during the audit process (audit field notes)
 - 1. Audit checklists provide assistance to the audit process.
 - 2. Auditors need to be trained in the use of a particular checklist and be shown how to use it to obtain maximum information by using good questioning techniques.
 - 3. Checklists assist an auditor to perform better during the audit process.
 - 4. Checklists help to ensure that the audit is conducted in a systematic and comprehensive manner and adequate evidence is obtained.
 - 5. Checklists provide the structure and continuity to the audit and ensure that the audit scope is being followed.
 - 6. Checklists provide a means of communication and a place to record data for use for future reference.
 - 7. A completed checklist provides objective evidence that the audit was performed.
 - 8. A checklist provide a record.
 - 9. Checklists can be used as an information base for planning future audits.
 - 10. Checklists can be provided to the auditee ahead of the onsite audit.

SELECTION OF AUDIT TECHNIQUES

The Auditors while the framing audit plan, design and apply appropriate audit tool, methods or procedures to obtain sufficient and appropriate audit evidence in order to form a conclusion or opinion as to whether a subject matter complies, in all material respects, with established criteria.

In the planning phase, auditor reviews the internal controls and institutional arrangements established by the auditable entity to prevent, detect, and rectify instances of noncompliance. Based on this review auditors identify control risks and other risks and keep these in consideration while they start gathering audit evidence. The audit procedures to be applied would depend on the particular subject matter and criteria and auditors' professional judgment. When the risks of non compliance are significant and auditors plan to rely on the controls in place, such controls are required to be tested. When controls are not considered reliable, auditors plan and perform substantive procedures to respond to the identified risks. Auditors perform additional substantive procedures when there are significant risks of non-compliance.

The compliance auditor will often need to combine and compare evidence from different sources in order to meet the requirements for sufficiency and appropriateness of audit evidence. Professional judgment needs to be exercised in considering the quantity and quality of available evidence when performing the engagement, in particular when determining the nature, timing and extent of procedures. Audit evidence is the information used by the auditor for arriving at the audit conclusions.

Gathering and Evaluating Evidence

The evidence gathering and evaluation is a simultaneous, systematic and an iterative process and involves:

- a) Gathering evidence by performing appropriate audit procedures.
- b) Evaluating the evidence obtained as to its sufficiency (quantity) and appropriateness (quality).

- c) Re-assessing risk and gathering further evidence as necessary.

The evidence gathering and evaluation process should continue until the auditor is satisfied that sufficient and appropriate evidence exists to provide a basis for the auditors' conclusion. Audit evidence is gathered using a variety of techniques such as the following:

Documents/Records scrutiny

This is predominant mode of obtaining audit evidence and involves scrutiny of a wide variety of documents e.g. board resolutions, agenda and minutes, notices, registers, cash books and accounting records, procedure manuals, reports etc.

When auditing, it is often not possible, due to limited resources, to check every document or record. The auditor may choose to sample a statistical representative number of documented results, such as monitoring data or incident reports. An appropriate sampling method will manage any uncertainty to an acceptable level.

Testing, Interviews and Analysis

The auditor should determine whether the controls identified during the preliminary review are operating properly and in 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 analyzing compliance with applicable policies and procedures and laws, rules, regulations and assessing the adequacy of controls. This exercise may result in significant findings which the auditor may bear in mind while preparing the audit report.

Questionnaires

This involves seeking information from relevant persons within the auditable entity through issue of a formal questionnaire to elicit further information and gather relevant audit evidence.

Confirmation

Confirmation is a type of inquiry and involves obtaining, independently of the auditable entity, a reply from a third party with regard to some particular information – for example confirmation of balances from the banks.

Analytical procedures

Analytical procedures involve comparing data, or investigating fluctuations or relationships that appear inconsistent. Data analytical tools, or analytical tools, statistical techniques or other mathematical models could also be used in comparing actual with expected results.

Evaluation of Evidence

Audit evidence collected through above mentioned audit procedures, is to be evaluated against the relevant, already identified criteria. This involves consideration of evidence collected vis-a-vis the subject matter information as well as the written responses obtained from responsible officers of the auditable entity against the applicable criteria.

What constitutes material non-compliance is a matter of professional judgment and includes consideration of the circumstances, quantitative and qualitative aspect of the transactions or the issues concerned. Auditors consider a number of factors in applying professional judgement to determine whether or not the non-compliance is material. Such factors may include the following:

- Extent and importance of amounts involved, which include both monetary values and other quantitative measures;
- Nature of the non-compliance;

- Cause leading to the non-compliance;
- Possible effects and consequences of the non-compliance;
- Visibility and sensitivity of the program in question; and Needs and expectations of the legislature, public and other users of audit reports

After evaluating the evidence and considering its materiality, the auditor should decide how best to conclude in the light of the evidence collected, which would be the supporting key documents and arrive at audit conclusions. While evaluating evidence auditors can find that audit evidence is conflicting i.e. while some evidence supports the subject matter information other evidences seem to contradict it. In such situations, auditors need to weigh the extent and credibility of conflicting evidence in order to reach a conclusion or collect more evidence to resolve the conflict. Audit conclusion should clearly bring out the nature and extent of non-compliance, cause of such non-compliance, its materiality and also the effect of non-compliance, if possible. The audit conclusions in case of regularity issues should also indicate whether non-compliance is a solitary one-off case, or wide spread systemic issue in the auditable entity.

SAMPLING

Auditor draws conclusions about the large volume of data (population) by selecting a sample out of such data. The sample size determines the quantum of risk that the auditor is ready to accept. There are no set rules for defining the sample size. Sample size depends upon the experience and professional judgment of the auditor and is also based on “Audit risk” factor.

Audit Sampling: Application of audit procedures to less than 100% of the population of documents/items relevant for audit such that all sampling units have a chance for selection (for applying audit procedure thereon) so as to provide the auditor a reasonable basis on which conclusion about the entire population can be drawn.

However, the Sample design, size & selection of items for testing should meet the following:

- Purpose of the audit procedure and population characteristics shall be considered for designing an audit sample.
- Sample size shall be so chosen as to reduce sampling risk to an acceptable low value.
- Random sampling, whenever practicable, shall be considered so that each sampling unit shall have reasonable chance of selection.
- For sampling, use of stratification and value-weighted selection will increase audit efficiency.

COMPLIANCE TEST OF INTERNAL CONTROL SYSTEM

The Compliance test of the internal compliance and control system is conducted by performing regular reviews of internal controls, operation of the risk management framework and the quality management system of the company. Generally, the audit and risk management committee is responsible for reviewing and analysing the effectiveness of the risk management framework, the internal compliance and control systems and should report on the same to the Board, not less than annually or at such intervals as determined by the board.

An auditor should go through the records of the company to conclude that the company’s existing procedures or mechanisms adhere to regulatory requirements, industry practices or corporate policies and function as intended and are commensurate with the size and the operations of the company. An audit compliance test may cover operational risks, technology systems, financial controls or regulatory guidelines.

SUBSTANTIVE CHECKING

Substantive checking is the technique use by auditor to obtain the audit evidence in order to support auditor opinion. Substantive checking is part of substantive audit approach and it is performing at the execution stage

of audit. It is different to test of control. The number of sample in substantive checking is depending on many factors.

For example, the audit approach considered by auditor depends upon whether they decided to use systematic approach, substantive audit approach or else. Normally, if audit approach to be used is substantive, then the volume of samples to be reviewed are higher than systematic approach.

Substantive testing is also called as detailed testing where the main objective are to verify the Compliances, transactions, and disclosures relating to non -financial statements. It is different from control test. In control testing, auditor assess the internal control that designed and implement by auditor especially the internal control over financial reporting. Auditor could not use the result of test of control to make conclusion that the statements are true and fair view. The result of test of control could only conclude the internal control context.

Accordingly, the substantive checking are to confirm the following assertion: —

- Verified existence,
- Confirmed rights and obligations,
- Check validity,
- Verified completeness.
- Check occurrence
- Check completeness,
- Confirmed accuracy,
- Verified authorization,
- Test cut-off dates

The substantive audit procedures are performing at the execution stag after auditors prepared audit planning.

DEPENDENCE ON OTHER EXPERT

In case where the auditor is planning to use the work of an expert, the auditor should evaluate the professional competence of the expert. This will involve considering the expert's professional certification or licensing by, or membership in, an appropriate professional body and experience and reputation in the field in which the auditor is seeking audit evidence like for building structure related compliance, a civil engineer is considered as the expert, for aviation related compliance, the aeronautical engineer is considered as expert and so on.

The auditor should evaluate the objectivity of the expert. The risk that an expert's objectivity will be impaired increases when the expert is employed by the entity; or is related in some other manner to the entity.

While issuing an unmodified auditor's report, the auditor should not refer to the work of an expert. Such a reference might be misunderstood to be a qualification of the auditor's opinion or a division of responsibility, neither of which is intended. If, as a result of the work of an expert, the auditor decides to issue a modified auditor's report, in some circumstances it may be appropriate, in explaining the nature of the modification, to refer to or describe the work of the expert (including the identity of the expert and the extent of the expert's involvement). In these circumstances, the auditor should obtain the permission of the expert before making such a reference. If permission is refused and the auditor believes a reference is necessary, the auditor may need to seek legal advice.

EXTERNAL EXPERTS' OPINION

An auditor may take external expert's opinion on various technical matters which forms the audit evidence. The auditor has to place reliance on the opinion expressed by the external expert considering his reliability,

competency, consistency with data & information and independence.

In case of an external expert it shall be ensured that the interests and relationship of the external expert does not constitute a threat to that expert's objectivity. The auditor shall evaluate adequacy of expert's work having regard to the following:

1. Relevance and reasonableness of expert's findings/conclusions and consistency thereof with other audit evidence.
2. Relevance and reasonableness of assumptions and methods used in the expert's work.
3. Relevance, reasonableness, accuracy and completeness of source data (if any) used in the expert's work provided, such data are significant for the expert's Work.
4. Agreement with the expert on the nature and extent of further work by the expert in case expert's work is found to be inadequate for audit purpose.
5. Performance of additional, appropriate audit procedures in case expert's work is found to be inadequate for audit purpose.

Reference of Expert's opinion in Audit Report

If the auditor's opinion remains unmodified by the work of an expert, such work shall not be mentioned in Report unless required by law or regulation. Even when such reference is required by law/regulation, the Auditor shall specify in the Report that such reference to expert's Work does not reduce responsibility for the opinion.

If the auditor's opinion is modified by the work of an Auditor's expert, such work may be referred to in the Audit Report to have an understanding of the modification of opinion, provided, the Auditor shall specify in the Audit Report that such reference to expert's work does not reduce auditor's responsibility for the auditor's opinion.

External Confirmation

External confirmation means Audit evidence obtained as a direct written response to the auditor from a third party (confirming party) on paper or electronic media or in any other form. External confirmation seeking steps are:

- (a) Determine information to be confirmed / requested.
- (b) Select appropriate confirming party.
- (c) Design/format confirmation request.
- (d) Send the request with follow up.

Results of External Confirmation & Reliability of Response

The auditor shall evaluate whether results of external confirmation provide relevant and reliable audit evidence or whether further audit evidence is necessary: In such cases

- (a) Where the auditor doubts the reliability of response further audit evidence should be obtained to resolve doubt.
- (b) In case of non-response, alternative audit procedure shall be performed to obtain reliable and relevant audit evidence.
- (c) Positive confirmation response request should be sought only when alternative audit procedures will not obtain audit evidence required. If the auditor does not receive such confirmation its implication on audit and auditor's opinion shall be evaluated.

- (d) The auditor shall not use response to any negative confirmation request as the sole substantive audit procedure to address assessed risk of a material misstatement.

COLLECTION OF AUDIT EVIDENCES

Audit evidence means information collected and used by the auditor in arriving at the conclusions on the basis of which his opinion is based.

An auditor need to plan & perform his audit tasks which enable him to obtain sufficient and appropriate audit evidence on the basis of which he can draw audit conclusions to express his opinion. When designing and performing audit procedures the auditor shall consider the relevance and reliability of the information to be used as audit evidence. The audit evidence may contain information provided and produced by the auditee itself or by management expert of the auditee or during the performance of the audit. Auditor needs to evaluate the accuracy and completeness of such audit evidence.

Absence of information e.g. inability or refusal of the management to provide information sought by the auditor also constitutes audit evidence. Audit evidence includes inspection, observation, confirmation, recalculation, reperformance and analytical procedures, often in some combination, in addition to inquiry. An auditor may be confronted with the situations such as contradictory audit evidence, questionable reliability of the information and documents collected and circumstances that may suggest misappropriations or frauds etc. under such situations, auditor should show professional skepticism and more rigorous audit steps are called for.

When the auditor doubts the reliability of information to be used for audit evidence or, audit evidence obtained from one source is inconsistent with that of another source, the auditor shall determine necessary modification or additions to audit procedure necessary to resolve the matter.

Audit evidence is more reliable when it is obtained from independent sources outside the entity, directly by the auditor and in documentary form. External confirmation should be obtained as a direct written response to the auditor, in documentary form which is considered as qualitative audit evidence.

Written representations by the management are audit evidence. Such written representations may not be considered as sufficient and appropriate audit evidence on their own and an auditor must also obtain other audit evidence regarding fulfillment of management responsibilities.

CREATION OF AUDIT TRAILS

The auditor should prepare and maintain working papers, the form and content of which should be designed to meet the circumstances of a particular engagement. The information contained in working papers constitutes the principal record of the work that the auditor has done and the conclusions that he has reached concerning significant matters. Working papers serve mainly to –

1. Provide the principal support for the auditor's report, including his representation regarding observance of the standards of field work, which is implicit in the reference in his report to generally, accepted auditing standards.
2. Aid the auditor in the conduct and supervision of the audit.

Working papers are records kept by the auditor of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in the engagement. Examples of working papers are audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the auditor. Working papers also may be in the form of data stored on tapes, films, or other media.

The quantity, type, and content of working papers vary with the circumstances, but they should be sufficient to show that the records agree or reconcile with the statements or other information reported on and that the

applicable standards of field work have been observed. Working papers ordinarily should include documentation showing that-

- The work has been adequately planned and supervised, indicating observance of the first standard of field work.
- A sufficient understanding of internal control has been obtained to plan the audit and to determine the nature, timing, and extent of tests to be performed.
- The audit evidence obtained, the auditing procedures applied, and the testing performed have provided sufficient competent evidential matter to afford a reasonable basis for an opinion, indicating observance of the third standard of field work.

Working papers are the property of the auditor. The auditor's rights of ownership, however, are subject to ethical limitations relating to the confidential relationship with clients.

Certain of the auditor's working papers may sometimes serve as a useful reference source for his client, but the working papers should not be regarded as a part of, or a substitute for, the client's accounting or other records.

The auditor should adopt reasonable procedures for safe custody of his working papers and should retain them for a period sufficient to meet the needs of his practice and to satisfy any pertinent legal requirements of records retention.

Audit working papers provide evidence of audit coverage and documentation of audit trails, they should be properly filed and stored. In addition there should be a standardized format for working papers, adequate cross-referencing to identify the audit working papers created as well as a system for filing and retrieving working papers.

MATERIALITY

Material means important and essential. The disclosure of important matters helps the users in taking business decisions. There should be neither suppression of vital facts nor mis-statements.

- The concept of the materiality draw the whole process of the audit, the user of the audit report does not require the absolute accuracy to make informed decision, accordingly a matter is considered material if its omission or misstatement would reasonably influence the decision of an intended user of the audit report.
- The concept of materiality should be considered by the auditor while determining the nature, timing and extent of audit procedures and evaluating the effect of the misstatements.
- The concept of materiality is used both at the planning stage of the audit, when deciding what and how much work need to be done and in evaluating the result of the audit, which is generally known as planning materiality and reporting materiality.
- The Auditor has to report the errors which he judges to be material, the audit work can be planned in the knowledge that it need to detect errors that are material.
- In accessing materiality, the prime consideration is the total value of the error, However, the values is not the sole consideration, the nature of the error or the context in which the transaction occurs are sometimes more important and the auditor must always consider these factors, as well as the value, when deciding whether an error is material.

Materiality consists of both quantitative and qualitative factors. Materiality is often considered in terms of monetary value but the inherent nature or characteristics of an item or group of items may also render a matter material. Materiality is a matter of professional judgment and depends on the auditor's interpretation of the users' needs. A matter can be judged material if knowledge of it is likely to influence the decisions of the intended users.

Materiality should be considered by auditor while determining the nature, timing and extent of audit procedures and while evaluating the effect of misstatement.

During the planning process, information is gathered about the entity in order to assess risk and establish materiality levels for designing audit procedures. Issues that may be considered material even if the monetary value is not significant would include the following:

- Material by value
- Material by nature
- Material by context
 - (a) Fraud;
 - (b) Intentional unlawful acts or non-compliance;
 - (c) Incorrect or incomplete information to executive, the auditor or to the legislature (concealment);
 - (d) Intentional disregard to the executive, authoritative bodies or auditors; and
 - (e) Events and transactions made despite knowledge of the lack of legal basis to carry out the particular event or transaction.

In formulating audit opinion or report, the auditor should inter-alia give due regard to the materiality of the matter keeping in view the amount, nature and context. Materiality is determined for:

- (a) Planning purposes
- (b) Purposes of evaluating the evidence obtained and the effect of identified instances of mis-statement or non-compliance: and
- (c) Purposes of reporting the results of the audit work.

RECORD KEEPING

Audit documentation is one of the fundamental building blocks on which the integrity of audits will rest. Quality and integrity of an audit depends on the existence of a complete and understandable record of the work the auditor performed, the conclusions the auditor reached, and the evidence the auditor obtained that supports those conclusions. Clear and comprehensive audit documentation is essential to enhance the quality of the audit. Audit documentation must be assembled for retention within a reasonable period of time after the auditor's report is released. Auditing firm should establish policies and procedures for retention of engagement documentation for a period sufficient to meet the needs of the firm or as required by law or regulation.

The needs of the firm for retention of engagement documentation, and the period of such retention, will vary with the nature of the engagement and the firm's circumstances, for example, whether the engagement documentation is needed to provide a record of matters of continuing significance to future engagements. The retention period may also depend on other factors, such as whether local law or regulation prescribes specific retention periods for certain types of engagements, or whether there are generally accepted retention periods in the jurisdiction in the absence of specific legal or regulatory requirements. In the specific case of audit engagements, the retention period ordinarily is no shorter than seven years from the date of auditor's report. any procedure that the Auditor adopts for retention of engagement documentation should :

- enable the retrieval of, and access to, the engagement documentation during the retention period, particularly in the case of electronic documentation since the underlying technology may be upgraded or changed over time.
- provide, where necessary, a record of changes made to engagement documentation after the engagement files have been completed.

- enable authorized external parties to access and review specific engagement documentation for quality control or other purposes.

LESSON ROUND UP

- The auditing principles defines governing an Audit and includes the professional responsibilities, which should be observed by the auditor while carrying out any audit assignments.
- The Audit techniques stand for the methods that are adopted by an auditor to obtain audit evidence and performance of the Audit as per the scope of the audit.
- Documents which have their origin in the hands of the third parties and held by third parties are more reliable than the documents which have their origin in the organization itself and held by the organization
- The Audit plan, describes the processes and activities that are to be carried out in connection with a particular audit and for the improving the quality of audit.
- Audit evidence means information collected and used by the auditor in arriving at the conclusions on the basis of which his opinion is based.
- Substantive checking is the technique use by auditor to obtain the audit evidence in order to support auditor opinion. Substantive checking is part of substantive audit approach and it is performing at the execution stage of audit.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Describe the auditing principles which should be observed by any auditor while performing any audit.
2. Write down the various factors which should be considered by the auditor while forming an audit plan.
3. Describe the component of audit risk with examples.
4. Write a short notes on the importance of the materiality in the audit.

Lesson 14

Audit Process and Documentation

LESSON OUTLINE

- Overview
- Preliminary Preparations
- Questionnaire
- Interaction
- Audit program
- Identification of applicable laws
- Creation of master checklist
- Maintenance of Work-sheet
- Working papers and audit trails
- Identification of events/corporate actions; Verification
- Board composition
- Board process
- Systems and process
- Identification of events having bearing on affairs of the Company
- Auditing standard on Audit process & documentation
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

An audit should be seen as an aid to the organisation concerned in ensuring that its operations are conducted in compliance with the provisions of the applicable legislations. An audit report is produced, conclusions and findings are outlined and recommendations issued based on an examination of facts and records available within the organisation.

The Audit process has three components i.e. Audit Planning, Audit Execution, and Audit Reporting, whereas the audit documentations is extremely necessary to avoid the duplication of the work, forming of audit opinion and for future and cross references.

After reading this lesson the student can understand the process of Audit and the manner of Documentation of the Audit records.

OVERVIEW OF THE AUDIT PROCESS

The audit process can be broadly grouped in three phases:

- a. Planning
- b. Executing
- c. Reporting

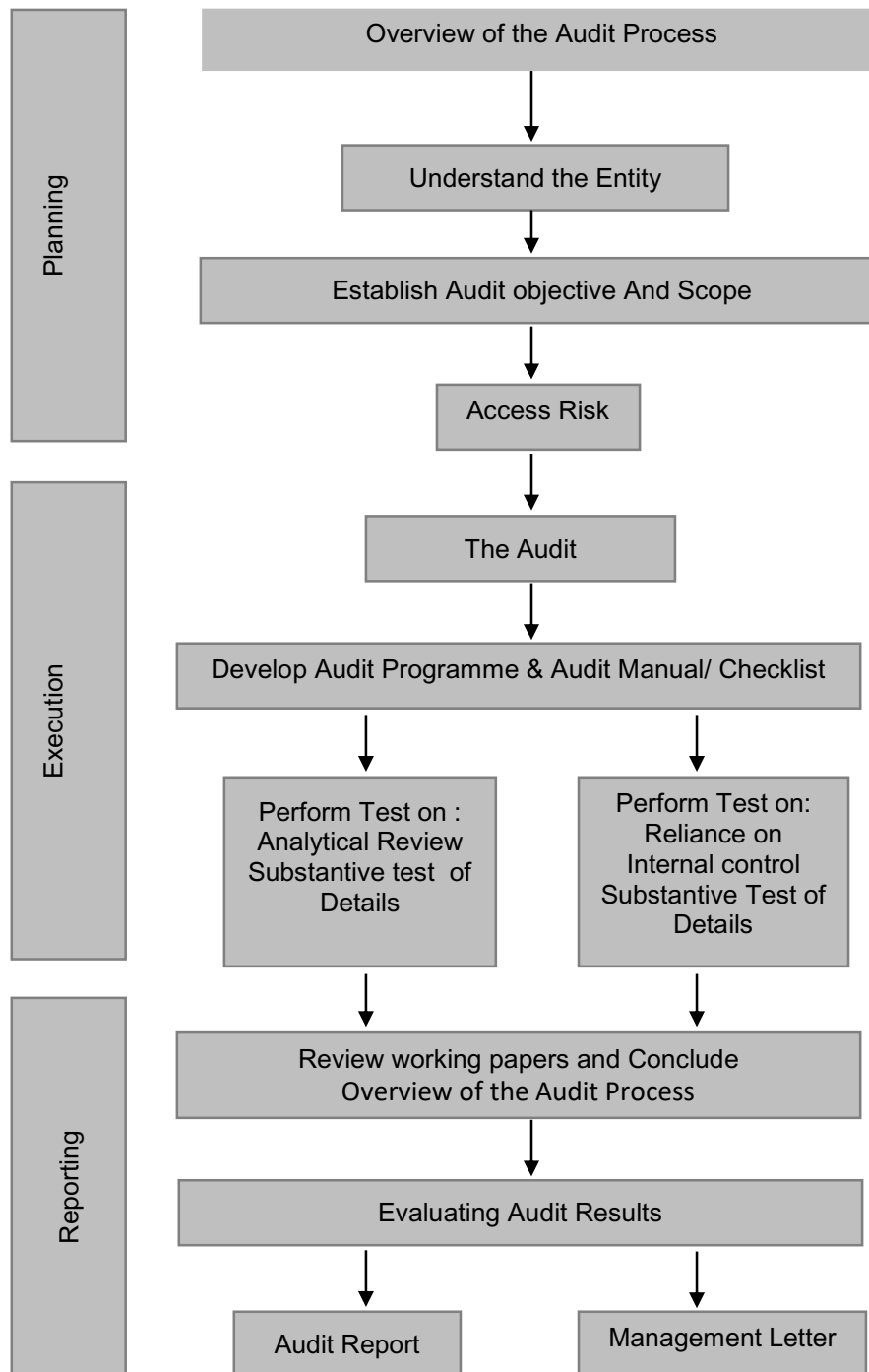
Audit Planning: For an effective audit, a timely, well thought out and well executed planning efforts is essential. The Auditor should obtain and update his understanding of the company, its activities, operation's and control environment in the company. The Audit planning consists of the following actions:

1. Understanding the company
2. Establishing audit objectives and scope
3. Determining Materiality
4. Assessment of Risk
5. Preparation of Audit plan
6. Preparation of detailed audit programme

Execution of Audit: The effective Audit Execution is based on the Audit plan and the efficiency of the Audit team. However the Execution of the audit covers the following actions:

1. Sampling of various transactions or items
2. Sampling for testing of controls
3. Identification of events
4. Performing controls testing procedures
5. Performing analytical procedures
6. Sampling for substantive test of details
7. Performing substantive test of details
8. Review of working papers
9. Management Discussion on Draft Report

Reporting: In the reporting phase, the auditor covers evaluation of audit results, deriving conclusion, forming of opinion and prepare the audit report



PRELIMINARY PREPARATION

In the preliminary preparation of audit process, information from the company has been obtained and the in house work is performed by the audit team for preparation of audit manual and before the execution of the audit. The illustrative list of the activities covered under the preliminary preparation is as under:

- A brief outline of the company's activities and financial circumstances, cross referenced to more detailed information if appropriate
- The effect of the regularity framework on the audit, cross referenced to a summary of primary and

secondary legislation.

- Details of any significant facts, events or changes which have taken or may take place; their likely effect on the company operations or environment and on the audit/.
- A description of the scope of the audit and the authority under which it is conducted and the type of audit, the form of opinion required and another reporting requirement. This should highlight any additional work required.
- The sources of funding, financial targets and a brief assessment of the Company's financial position.
- Planning materiality, cross referenced to documentation setting out the reasons and basis on which it was calculated
- A summary of specific risk identified any major problem likely to be met and other items in the financial statements which are likely to require specific attention – this should be cross referenced to the audit objective affected and relevant audit programmes.
- A brief assessment of general control environment and mitigating controls and whether they are to be relied on.
- A brief overview of the audit approach to be adopted, this is to say the degree of the compliance and substantive procedures.
- Audit proposal for dealing with multi locations
- Details of the nature and extent of use to be made of the work to be carried out by internal audit other auditors and specialists
- A summary of the key team members and the total planned days / hours.
- Respective responsibilities of the auditor and the auditee entity; and
- Liaison schedule with auditee entity.

After the preparation of the audit manual the detailed audit programme should be prepared by the audit team, the audit programme should contain the role of team members in the performance of the chosen audit procedures.

QUESTIONNAIRE

Questionnaire is a comprehensive series of questions concerning internal control. This is the most widely used from for collecting information about the existence, operation and efficiency of internal control in an organisation. An important advantage of the questionnaire approach is that the oversight or omission of significant internal control review procedures is less likely to occur with this method. With a proper questionnaire, all internal control evaluation can be completed at one time or in sections. The review can more easily be made on an internal basis. The questionnaire form also provides an orderly means of disclosing control defects. It is the general practice to review the internal control system annually and record the review the detail. In the questionnaire, generally questions are so framed that a 'Yes' answer denotes satisfactory position and a 'No' answer suggests weakness. Provision is made for an explanation or further details of 'No' answers. In respect of questions not relevant to the business, 'Not applicable' reply is given. The questionnaire is annually issued to the client and the client is requested to get it filled by the concerned executives and employees. If on a perusal of the answers, inconsistencies or apparent incongruities are noticed, the matter is further discussed by auditors with the client for a clear picture and accordingly the auditor prepares a report of deficiencies and recommendation for improvements.

INTERACTION THROUGH INTERVIEWS

The main purposes for an interview in context of an audit are orientation, examination and confirmation. An

interview can have one or two of these purposes, but normally not all three at the same time.

Orientation is normally part of the audit team's learning process during the planning phase. It aims at exploring and giving an overview of a specific area or function, e.g., by asking for presentations of activities, explanations of formal or informal networks or interpretation of documents (reports, instructions or, budgets). The objective could be to identify possible audit subjects or to find out about other available sources of information, such as key persons or documentation.

Examination aims at more specific issues with a view to establishing new information, often to be used as audit evidence. In some cases, such information has not been previously recorded at all but is embodied in the interviewee through personal experiences, particular references, opinions, etc. In other cases, the knowledge can be retrieved for example by (joint) interpretation of internal documents, reports or records.

It should be noted that evidence obtained from interviews often needs to be corroborated, i.e. supported by evidence from other data collection methods

Confirmation, finally, often goes together with either orientation or examination, but deserves to be mentioned as a separate purpose because of its fundamental importance. Confirmation, by definition, is typically based on information that has already been gathered. However, in this context the information can also be gathered and confirmed simultaneously. Not least in the planning phase, it is important to have basic conditions and facts explicitly confirmed by stakeholders. However, in the execution phase there might also be a need to confirm facts and findings. If data is incorrectly understood, the quality of the whole audit may suffer and a lot of work may be in vain.

The interview techniques can be gainfully used in a structured or unstructured manner to elicit information from the entity both in the planning as well as execution phase. The Auditor can use the interview mode to obtain both qualitative and quantitative information.

The aim in the planning phase is to develop a comprehensive and correct understanding of the audited activity or the auditee's business in order to facilitate the identification of significant audit issues, there is therefore a need to get orientation as well as confirmation. An interview can very well be justified by a combination of these purposes. Orientation requires a more unstructured approach, with the auditor having maximum flexibility where necessary to explore themes that have not previously been considered and to deeply probe the responses that are given. In this phase, the auditor generally does not have a prior hypotheses or deep knowledge of the project or activity. Confirmation, on the other hand, needs a fairly structured approach in order to have important facts and conditions verified.

In the execution phase of the audit, when the objective is often a more focused examination of an area, in order to capture simple, factual data, to document or clarify certain points or to test hypotheses, interviews will typically have a more structured form. The aim is often to obtain evidence (documents, opinions and ideas) that relate to the audit's objectives, to confirm facts and to collaborate data from other sources. The auditor has a firm grasp of the issues he wants to cover and should know in advance what type of data he wants.

AUDIT PROGRAMME

Most of the time audit is conducted by a team instead of just an individual. If business is small or if there is not much to be done then it might be possible to conduct the whole engagement easily by an individual. But usually amount of work, time constraints and other factors require the audit engagement to be conducted by more than one person. In order to properly assign work to each individual and what is required to be done by whom there must be some kind of instructions set and work profile, otherwise, more than one member might be auditing the same area or in other case some areas may be left completely unaudited. To ensure efficient and effective conduct of audit assignment, audit programmes or audit programs are used.

Audit programme contains step by step instructions to be carried out by team members i.e. it is simply a list of

audit procedures to be executed by team members. Even though audit programme sets out the whole agenda for every member of the team but the main users are the audit executives for whom it acts as a direction to be followed. The main purpose of audit programme is that every material area has been audited appropriately and sufficient appropriate audit evidence has been obtained in respect of every important areas of audit.

Audit programmes are prepared on the basis of audit plan usually by the auditor who is signing the Audit Report of the company. But sometimes, auditors have a basic audit programme and the same is used by the auditor after making some modifications to it to make it according the audit engagement in hand. Mostly it is in the form of a checklist which can be used by the Audit executives to make sure every required procedure has been implemented. This can also help in monitoring the work of Audit executives in specific or assistants in general.

Audit programmes may be laid down in advance for the whole year for some aspects of the audit which auditor expects to be audited after regular intervals of time or when needed. For understandability and convenience, audit programmes are written for each audit area separately and then assigned to specific team members.

An audit programme is a set of instructions which are to be followed for proper execution of audit. After the development of audit plan a detailed written audit programme containing the various steps and procedures shall be required. The audit programme contains the measures that are generally employed to determine what, and how much evidence must be collected and evaluated. It also lays down the responsibilities for the whole audit team for carrying out different tasks.

The prepared audit program may be revised if needed in accordance with the prevailing circumstances. An audit program largely depends on the size of the organization and other relevant factors. Minimum essential work to be done is Standard Programme and rest is according to circumstances. There is no standard audit programme applicable for all situations. Audit programme is documented in the Audit Working Papers, which are the official record that contains the planning and execution of the audit agreement.

Difference between Audit Plan and Audit Programme

Audit Plan	Audit Programme
Audit Plan lays down the audit strategies to be followed for conducting an audit such as identifying the areas where special audit consideration and skills may be necessary, obtain the knowledge of business etc.	Audit programme is an outline of how the audit is to be done, who is to do what work and within what time
Plans should be made to cover the following among other things: <ul style="list-style-type: none"> (i) Acquiring knowledge of accounting systems, policies and internal control procedures (ii) Establishing the expected degree of reliance to be placed on the internal control (iii) Determining the nature, timing and extent of the audit procedures to be performed (iv) Co-ordinating the work to be done 	It lays down the following audit procedure to be followed : <ul style="list-style-type: none"> (i) Evaluation process (ii) Ascertaining accuracy (iii) Verification of Document (iv) Scrutiny of supporting Documents (v) Checking of overall disclosure and presentation of all items in the audit completion. (vi) Preparation and submission of audit report.

IDENTIFICATION OF APPLICABLE LAWS

In India, Every mode of business needs to obey various laws, rules, regulations, orders etc. depending on the manner of doing business, business activities and areas of doing business. Sometimes, this may include

laws from multiple countries and sometimes such laws have conflicting requirements on each other. In such situations, the best approach is to work with legal team or with an expert to create an outline of all the regulations and contractual obligations. Identify which requirements may impact the organization and discuss the results with management to determine and development of suitable measures which are sufficient for compliance.

Further, the identification of the compliance requirements under applicable laws is just one part of the auditor, but for the management of the company it is necessary to make sure there is sufficient evidence that the company is compliant with each and every one of them. For ensuring the compliance of the applicable laws the company:

- should have a documented inventory of every applicable law, regulation, contractual obligation and any other form of compliance requirement which needs to comply;
- should publish its compliance policy which should be supported by standards, procedures, and guidelines;
- should exchange emails with legal\compliance team, functional heads, compliance officers and others with information on compliance obligations and skills (e.g. Privacy, Procurement, HR, Finance, IT) concerning compliance matters in the information security context;
- should share related agendas, minutes or notes of meetings with those people on related matters;
- should place Internal reports concerning applicable compliance obligations, ideally with evidence that management is actively engaged in assessing the extent to which compliance is needed and aware of the risks of non-compliance;
- should conduct Compliance assessment\review\audit reports, noting the content, form, distribution, status.

For an auditor and the company it is required to identify the applicable legal requirement of act, regulation but should also identify the sections applicable under such regulation.

Further, the legal compliance for a holding company/ subsidiary company/ joint venture company with diverse operations, the compliance requirement will vary from operation to operation based on the nature of the operations and the locations of the different operation and also based on the applicable legal instruments, and the applicable sections of the relevant laws referred in those legal instruments. The diverse operation and different geographical location may create a complexity in compliance.

Dealing with the amendment in the laws is another concern in fulfilling compliance requirement, which requires that the company should keep up to date information on the compliance requirement with an information of the changes in the laws and regulations. Further, the legal team of the company should continuously communicate the effect of such changes on the Company, its holding, subsidiary, Joint Venture Company or any of the geographical area where the company operates.

Some of the regulators like MCA, RBI, SEBI, on time to time issue the Master Circulars, and Master Direction, Removal of Difficulties Order etc. which helps in identifying and figure out the actual requirement of the law which needs to be complied with.

CREATION OF MASTER CHECKLIST

The Audit is not a process of the collecting data and checking the checkbox, it is the postmortem of the affairs of the company, the data and evidence collected during the execution of the audit shall be independently reviewed by the auditor and submit its report to the shareholders. Unless the auditor independently reviews the facts & data, the auditor is not able to give his independent opinion.

The truth is that collecting data and checking the box is just not good enough. The mere existence of a control

chart doesn't ensure the compliance and equate to sustained, significant process improvement and complete the audit.

In general, an audit checklist can be divided in to the following headings according to their significance in the audit scope.

1. Entity operation and organizations: This checklist contains the matters relating to:

- Product manufactured/ service delivered/ operation performed by the company.
- Statutory status basis for these operations.
- Objects of the company as per the memorandum of association
- Capital structure of the company and funding status.
- Details of the promoters and directors of the company
- Details of subsidiaries, joint ventures and associate companies
- Transactions with the related parties.
- Material changes took place during the audit period.
- Recipient of the products/Services of the company
- Details of the key managerial personnel.
- Details of the functional head responsible for audit
- Details of the audit committee and its term of references
- Details of the geographical location where the company operates
- Audit observations of the previous year's etc.

2. Financial & Non-financial Reporting Requirement

The company's financial statement, directors' report, annual return, websites, filing with the regulators are the primary source of information about the company. The financial statements are the focus of financial audit, the audit team should familiarize itself with the format of financial statement which needs to be submitted to the regulators. This checklist generally covers the points relating to changes in laws, regulations, accounting standards, accounting rules or accounting policies since the last audit, new heads of accounts introduced since the last audit, changes in the format of accounts or any such item which require exercising of judgement or estimation.

In case of the non-financial disclosures and reporting requirement the audit team should have the detailed requirements under legal and regulatory framework along with the procedural requirements of the same. The auditor should check the limits, eligibility, criteria etc. on the various dates to understand the compliance requirement

3. Legal and regulatory requirement

The legal and regulatory requirement of every company differs according to the nature and status of the company, its business activity, area of operation, geographical location etc. depending on the relevant central, state and local laws, rules & regulations. It is the most important for the auditor to have the detailed compliance requirement applicable to the company and such checklist should cover the section wise compliance requirement highlighting the amendment during the audit period.

4. Matter of Shareholder and public interest

The audit team should identify the extent of the shareholder and public interest in the company's activities and

the financial statement. the factors which might indicate such interest includes the public deposit, loan and advances dividend, corporate social responsibility, small shareholders' interest, high level of comment in media etc.

5. Review of Control Environment

The control environment comprises the conditions under which the various process of the entity are designed, implemented and functions and based on that the audit team should seek to arrive at a conclusion as to whether the control environment is reliable and justifiable in accordance with the size and operations of the company. After the review of the control systems, the auditor determines the specific component increase or decrease, the effectiveness of some or all application systems and controls. If based on the understanding of the control environment, the audit team has fundamental doubts about the effectiveness of the prevailing systems and controls, the same should be reported to the entity and should be kept in mind while carrying the audit. The checklist shall contain the checkpoints relating to management characteristic, philosophy, operation style and commitment, accurate disclosures and reporting

- The operating environment and culture
- Management commitment to designing and maintaining reliable accounting systems
- The ability of management to control the operations
 - The organizational structure of the entity
 - Methods of assigning authority and responsibility
 - Supervision and monitoring
 - Senior management control methods

WORKING PAPERS AND MAINTENANCE OF WORK SHEET

Working Papers

The working paper file contains the documents relating to the work performed by the auditor. The working papers serve as the connecting link in between the audit assignment, the auditor's fieldwork and the final report. Working papers contain the records of planning and preliminary surveys, the audit program, audit procedures, fieldwork, fact findings and other documents relating to the audit.

In the working papers document the auditor's conclusions and the reasons as to why those conclusions were reached should be documented. The disposition of each audit finding identified during the audit and its related corrective action should be documented.

Audit working papers are the documents prepared or obtained by the auditors and retained by him in connection with the audit. Audit working papers are used to support the audit work done in order to provide assurance that the audit was performed in accordance with the applicable standards. Working papers include all the evidence gathered by auditor indicating what work has been done by him and the procedure he has followed in verifying a particular asset or a liability and also provide information that whether:

- audit was properly planned;
- audit was carried out;
- audit was adequately supervised;
- the appropriate review was undertaken;
- the evidence is sufficient and appropriate to support the audit opinion.

Working papers should be completed throughout the audit and Working papers should be economical to prepare and to review. It is easy to include every scrap of information and every form into the working papers. However, the working papers then become a confused mixture of data that is difficult to assimilate and use.

Working papers should be complete and concise, they should be considered as a usable record of work performed. Auditors should include in their working papers only what is essential; and, they should ensure that each work paper included serves a purpose that relates to an audit procedure. Working papers which are created during the audit and later determined to be unnecessary should be deleted/removed. The working papers may include:

- (a) Planning documents and audit programs.
- (b) Internal control questionnaires, flowcharts, checklists and narratives.
- (c) Notes and minutes resulting from interviews.
- (d) Organizational data, such as charts with job descriptions, process chart.
- (e) Copies of important documents.
- (f) Information about operating and financial policies.
- (g) Results of control evaluations.
- (h) Letters of confirmation and representation.
- (i) Analysis and test of transactions, processes.
- (j) Results of analytical review procedures.
- (k) Audit reports and management responses.
- (l) Audit correspondence that documents the audit conclusions reached.

Scanned Documents as working papers

Scanned documents should include a reference to the source and the purpose of the document which is relevant to understand or appreciating the actual audit work performed. Such information needs to be included only when it is not provided elsewhere in the working papers.

Tick marks

Tick marks do not need to be standardized throughout the set of working papers, but must be consistent throughout a particular work paper. Tick mark explanations must be a part of the working paper or included in a separate tick mark legend work paper.

Cross Referencing

Working papers should be prepared using the appropriate cross referencing. A cross reference from the Audit Procedures to the primary working paper provides a reference to where the work was performed. It is not necessary to cross refer all work papers to the Audit Procedures - only the primary work paper should be cross referred. The primary work paper will then contain cross-references to other, supporting working papers, which provide additional information regarding the audit procedures performed, results, and conclusions reached.

Cross-references should be used to refer information useful in more than one place or to other relevant information including the source of information, composition of summary totals, or other documents or examples of transactions. To encourage conciseness, documents/information only single copy of the working papers should be placed in working file for cross referencing.

Standard Working papers

A standard set of working papers will include at least the following documents:

- a. **General File:** The General File contains key information through the various phases of the audit including planning (audit objectives, planning comments including etc.), reporting process, audit programs and comments for the next audit. The General File will include the draft and final reports. Audit responses will also be included in the file.
- b. **Work paper File:** This file should contain the detailed audit procedures and detailed audit working papers. Detailed audit procedures provide detailed audit steps of the audit work to be performed during fieldwork that will achieve the specific audit objectives outlined in the audit program.
- c. **Future Audit Considerations:** Auditors are encouraged to develop and document future audit ideas during the course of their work. These should be included in the “Comments for next audit” section of the general file.

Working papers are the connecting link between the client's records and the audited records. These provide permanent historical record. These also serve as a great guide to the staff to whom the work of audit has been assigned after the previous year audit. These would come to the help of the auditor in future in case the client files a suit against the auditor's negligence. The working papers are the property of the auditor and the client cannot ask the auditor for their custody. However it is the duty of the auditor to maintain confidentiality of the client information. Further, if audit working papers are disclosed than it may amount to professional misconduct.

Types of Working Papers

The auditor's working papers are divided into two parts:

(i) Permanent File

The permanent file usually contains documents and matters of continuing importance of clients' business which will be required for more than one audit. The data in these file are the information, which is of continuous interest and relevant to succeeding audits. Data in this file can include the following:

- A. Statutory Documents
- B. The rules and regulations of the company
 - a. Memorandum of Association
 - b. Articles of Association
 - c. Certificate of Incorporation / Commencement of Business
 - d. Registration documents under various statutory bodies
- C. Copies of documents of continuing importance and relevance to the auditor
 - a. Letter of engagement and Board Resolution for appointment of the auditor
 - b. Record of communication with the retiring auditor
 - c. Royalty Agreement / Technical collaboration
 - d. Copies of important legal documents/contracts
- D. Addresses of the registered office and business -The Company's registered office address and all other units/premises, with a short description of the work carried on at such places.
- E. An organization chart -Details of all departments and sub-divisions thereof showing hierarchy of

management.

- F. List of books and records with location -List of books and records maintained by the company and place of their location. Names, positions, specimens of signatures and initials of persons responsible for books and document should also be included.
- G. An outline history of the organization.
- H. Analysis of significant ratios and trends.
- I. Internal Controls - Notes on internal control with Details of study & evaluation of internal controls in the form of narrative record, questionnaires or flow charts etc.
- J. The business structure within a group and associated companies - List of all holding, subsidiary and associate companies.
- K. Company's advisors - list of the company's advisors such as bankers, merchant bankers, stockbrokers, solicitors, valuers, insurance brokers etc.

(ii) Current Audit File

These file contains information relating to the audit of the current period. Information included in the current file should be information for the period under audit. The indicative list of current file can be as follows:

- A. Appointment letter for the Current Year, along with the defined scope of Audit
- B. Extracts of important board/management meetings
- C. List of responsible persons with their designation and contact details
- D. Secretarial Audit Report/Financial Audit Report for Current year as well as previous year
- E. Actions initiated by company towards Secretarial Auditor's observations and suggestions in previous years reports
- F. Audit Plan/Audit Program
- G. Current year's Secretarial Records
- H. Communications with the company/management team
- I. Letters of representations, confirmations received from company
- J. Audit review points and highlights of analysis

Audit Trail

Audit Trail is a repository of administrative and operational documentation relating to audit process. It is established and maintained to aid in audit planning and to centralize available documentation and information not included in the individual audit files. Information included in the permanent files should only be information that cannot be feasibly included in the working papers due to volume or format or because the information will be applicable on an on going basis to the current audit or future audits. Permanent files should be filed with all audit and follow-up working papers supporting the audit. The contents of permanent files are dependent on the needs of the audit. An index should be developed and placed in the front of the permanent file indicating the documents contained, date included in file and auditor's initials.

Working paper Review

The auditor should review all working papers to determine whether they are relevant and have a useful purpose, evidence the audit work performed and sufficiently support the audit findings. In addition, the auditor should

ensure the conclusions reached were reasonable and valid, and that the Office working paper standards were followed. The auditor should review all audit review notes to be certain that all notes have been resolved within the working papers. Documentation obtained and not relevant to the audit should be returned/destroyed upon the completion of the audit. The review will consist of:

- (a) Determining compliance with working paper guidelines.
- (b) Reviewing the audit program that outlines the major objectives of the audit, and ensure that the procedures accomplish the objective(s).
- (c) Reviewing the audit procedures and the referenced working papers to ensure the working papers support the procedures performed and all procedures have been completed.
- (d) Determine that the working papers adequately document the conclusions reached in the report.
- (e) Ensuring that all findings prepared have been discussed with the appropriate member of management, and that the disposition of the audit concerned is documented.
- (f) Documenting review notes.

Filing and Protection of Working papers

All working papers that are considered confidential, are the property of the Auditor, and are to be kept under adequate control. Working papers often contain sensitive information or data that must be protected from unauthorized use or review.

Working papers in process also need to be controlled by the Auditor. While conducting field work away from the Auditor's office, the auditors should control the working papers to ensure that information is neither removed, nor substituted nor altered.

Retention Policy

All working papers pertaining to an audit belong to the Auditor. All such data is to be kept by the Auditor and is subject to the retention requirements as required by law.

IDENTIFICATION OF THE EVENT AND CORPORATE ACTIONS

During the Audit planning stage the auditors should go through the various filings with statutory bodies etc. to understanding the company affairs, the following points considered as events/information on which the auditor should specifically verify the compliance required under applicable laws.

1. Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the Company or any other restructuring.
2. Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc.
3. Revision in Rating(s).
4. Outcome of Meetings of the board of director relating to
 - dividends and/or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched;
 - any cancellation of dividend with reasons thereof;
 - the decision on buyback of securities;

- the decision with respect to fund raising proposed to be undertaken
 - increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched;
 - reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to;
 - short particulars of any other alterations of capital, including calls;
 - financial results
 - decision on voluntary delisting by the listed entity from stock exchange(s).
5. Agreements (viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) impacting management and control of the Company, agreement(s)/treaty(ies)/ contract(s) with media companies) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof.
 6. Fraud/defaults by promoter or key managerial personnel or by Company or arrest of key managerial personnel or promoter.
 7. Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer , Company Secretary etc.), Auditor and Compliance Officer.
 8. Appointment or discontinuation of share transfer agent.
 9. Corporate debt restructuring.
 10. One time settlement with a bank.
 11. Reference to IBC, 2016 and winding-up petition filed by any party / creditors.
 12. Issuance of Notices, call letters, resolutions and circulars sent to shareholders, debenture holders or creditors or any class of them or advertised in the media by the Company .
 13. Proceedings of Annual and extraordinary general meetings.
 14. Amendments to memorandum and articles of association.
 15. Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division
 16. Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/division (entirety or piecemeal)
 17. Capacity addition or product launch.
 18. Awarding, bagging/receiving, amendment or termination of awarded/bagged orders/contracts not in the normal course of business.
 19. Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof.
 20. Disruption of operations of any one or more units or division of the Company due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.
 21. Effect(s) arising out of change in the regulatory framework applicable to the Company
 22. Litigation(s) / dispute(s) / regulatory action(s) with impact.

23. Fraud/defaults etc. by directors (other than key managerial personnel) or employees of Company.
24. Options to purchase securities including any ESOP/ESPS Scheme.
25. Giving of guarantees or indemnity or becoming a surety for any third party.
26. Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.
27. Any other information/event viz. major development that is likely to affect business, e.g. emergence of new technologies, expiry of patents, any change of accounting policy that may have a significant impact on the accounts, etc. and brief details thereof and any other information which is exclusively known to the Company and which may be necessary to enable the holders of securities of the Company to appraise its position and to avoid the establishment of a false market in such securities.

IDENTIFICATION OF EVENTS HAVING BEARING ON AFFAIRS OF THE COMPANY

The Auditor should 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. all information which have bearing on performance/operation of the company or is price sensitive or affect payment of interest or dividend of non-convertible preference shares or redemption of nonconvertible debt securities or redeemable preference shares etc. An event/action may be considered as having major bearing on Company's affairs includes the following situations:

- a. Events/actions altering the Incorporation documents of the Company
- b. Changes in the Capital structure of the company
- c. Change in the affairs/management of the company
- d. Change in the licensing or permission for the business operation of the company
- e. Capacity expansion and utilization of the company
- f. Sale/ Disposing of the substantial assets of the company
- g. Entering in to Joint ventures agreements etc.

Further, the SEBI (LODR) Regulations, 2015 include the following events which are considered as having bearing on affairs of the company:

- (1) default in timely payment of interests/preference dividend or redemption or repayment amount or both in respect of the non-convertible debt securities and non-convertible redeemable preference shares and also default in creation of security for debentures as soon as the same becomes apparent;
- (2) any attachment or prohibitory orders restraining the company from transferring non-convertible debt securities or non-convertible redeemable preference shares from the account of the registered holders along-with the particulars of the numbers of securities so affected, the names of the registered holders and their demat account details;
- (3) any action which shall result in the redemption, conversion, cancellation, retirement in whole or in part of any non-convertible debt securities or reduction, redemption, cancellation, retirement in whole or in part of any non-convertible redeemable preference shares;
- (4) any action that shall affect adversely payment of interest on non-convertible debt securities or payment of dividend on non-convertible redeemable preference shares including default by issuer to pay interest on non-convertible debt securities or redemption amount and failure to create a charge on the assets;
- (5) any change in the form or nature of any of its non-convertible debt securities or non-convertible redeemable preference shares that are listed on the stock exchange(s) or in the rights or privileges

of the holders thereof and make an application for listing of the securities as changed, if the stock exchange(s) so require;

- (6) any changes in the general character or nature of business / activities, disruption of operation due to natural calamity, and commencement of commercial production/commercial operations;
- (7) any events such as strikes and lock outs. Which have a bearing on the interest payment/dividend payment/ principal repayment capacity;
- (8) details of any letter or comments made by debenture trustees regarding payment/non-payment of interest on due dates, payment/non-payment of principal on the due dates or any other matter concerning the security, listed entity and /or the assets along with its comments thereon, if any;
- (9) delay/default in payment of interest or dividend / principal amount /redemption for a period of more than three months from the due date;
- (10) failure to create charge on the assets within the stipulated time period;
- (11) any instance(s) of default/delay in timely repayment of interests or principal obligations or both in respect of the debt securities including, any proposal for re-scheduling or postponement of the repayment programmes of the dues/debts of the Company with any investor(s)/lender(s). Explanation.-For the purpose of this sub-para, 'default' shall mean Non-payment of interest or principal amount in full on the pre-agreed date and shall be recognized at the first instance of delay in servicing of any interest or principal on debt.
- (12) any major change in composition of its board of directors, which may amount to change in control as defined in Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- (13) any revision in the rating;
- (14) the following approvals by board of directors in their meeting:-
 - (a) the decision to pass any interest payment;
 - (b) short particulars of any increase of capital whether by issue of bonus securities through capitalization, or by way of right securities to be offered to the debenture holders, or in any other way;
- (15) all the information, report, notices, call letters, circulars, proceedings, etc. concerning non-convertible redeemable preference shares or non-convertible debt securities;
- (16) any other change that shall affect the rights and obligations of the holders of non-convertible debt securities /non-convertible redeemable preference shares, any other information not in the public domain necessary to enable the holders of the listed securities to clarify its position and to avoid the creation of a false market in such listed securities or any other information having bearing on the operation/performance of the listed entity as well as price sensitive information.

BOARD COMPOSITION

The Auditor should go through the following points while conducting the audit:

1. Board of directors:

- a. composition and category of directors (e.g. promoter, executive, non-executive, independent non-executive, nominee director-institution represented and whether as lender or as equity investor);
- b. attendance of each director at the meeting of the board of directors and the last annual general meeting;

- c. number of other board of directors or committees in which a directors is a member or chairperson;
- d. number of meetings of the board of directors held and dates on which held;
- e. disclosure of relationships between directors inter-se;
- f. number of shares and convertible instruments held by non-executive directors;
- g. web link where details of familiarization programme imparted to independent directors is disclosed

2. Audit committee:

- a. brief description of terms of reference;
- b. composition, name of members and chairperson;
- c. meetings and attendance during the year.

3. Nomination and Remuneration Committee:

- a. brief description of terms of reference;
- b. composition, name of members and chairperson;
- c. meeting and attendance during the year;
- d. performance evaluation criteria for independent directors

4. Stakeholder Relationship Committee:

- a. brief description of terms of reference;
- b. composition, name of members and chairperson;
- c. meeting and attendance during the year.

BOARD PROCESSES

The Board of directors as an institution plays a prominent role in corporate governance. It is responsible for directing and overseeing the business and management of the company. Given this pivotal role of the board, directors are considered as fiduciaries in that they are required to act in the interest of various constituencies in a company such as shareholders and other stakeholders. Accordingly, the law foists on the directors duties and liabilities as instruments that modulate their conduct.

Directors are, however, entitled to various protective measures in the form of mitigating factors either conferred upon them by law or through practical mechanisms they may establish. The Section 118(10) mandates on every company to observe the Secretarial Standards on the meeting of the Board of Directors (SS-1) as specified by the Institute of Company Secretaries of India (ICSI).

The SS-1 helps in providing clarity in certain areas where the law is either silent or ambiguous. Wherever the law is silent, certain good governance practices have been recommended and where it is ambiguous, the standards try to bring in more clarity and adhere the common board processes across country.

To ensure the effective board processes the auditor should also observe the requirement of the secretarial standards during the Audit along with the disclosure, eligibility, level of expertise, involvement of the directors in decision making etc.

LESSON ROUND UP

- The audit process can be broadly grouped in three phases: Planning, Executing and Reporting.
- In the Preliminary preparation the auditor obtained information from the auditee and perform in-house work for preparation of audit manual.
- Questionnaire is the most widely used from for collecting information about the existence, operation and efficiency of internal control in an organisation.
- The working paper file contains the documents relating to the work performed by the auditor.
- The permanent file usually contains documents and matters of continuing importance of clients' business which will be required for more than one audit, whereas the current file contains information relating to the audit of the current period.
- The Secretarial Standard -1 provide clarity in certain areas of Board Processes where the law is either silent or ambiguous.

SELF -TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Creation of master checklist is an important step in the audit process. Comment
2. The interview is the most reliable source for obtaining the information for the auditor. Comment
3. Write short notes on:
 - i. Identification of applicable laws
 - ii. Audit trails
 - iii. Audit questionnaire
4. Write the difference between audit plan and audit programme.
5. Describe the documents which should be placed in the permanent file and current file.

Lesson 15

Forming an Opinion and Reporting

LESSON OUTLINE

- Introduction
- Forms of Opinion
- Materiality
- Third Party Opinion
- Management Representation
- Sharing of Draft Report
- Signing of Audit Report
- Reporting with Qualification
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

In any Audit, the auditor need to form an opinion on the affairs of the company to state that whether they are in accordance with the applicable laws or not and report the same in his audit Report.

The auditor should form his opinion on considering all material respects, in accordance with the applicable reporting framework and the requirement of the audit.

This lesson covers the various forms of Audit opinion and its relevance under the audit report.

INTRODUCTION TO PROCESS OF FORMING AN OPINION

The audit is performed by an Auditor who is independent to the company which is being audited and the critical part in Auditing is the forming of opinion i.e. views of the auditors, which shall be based on the fact, records verifications made by him during the performance of the audit. This requires auditors to have knowledge of the basic principles of forming an audit opinion and should have expertise in application of knowledge while forming opinion.

During the performance of the audit or after the conclusion of the audit, the auditor need to submit a report stating that the affairs of the company are carried out in the fair manner and are free from material misstatement.

However, the content of the opinion should clearly indicate whether it is unmodified or modified and if modified, whether it is modified as adverse or disclaimer of opinion. The auditor should form his opinion on considering all material aspects, in accordance with the applicable reporting framework and the requirement of the audit.

In order to form that opinion, the auditor shall conclude as to whether the auditor has obtained reasonable assurance about whether the affairs of the company relating to the scope of audit as a whole are free from material misstatement.

In particular, the auditor shall evaluate whether, in view of the requirements of the applicable reporting framework:

- (a) The Company has adequately disclose information about its affairs;
- (b) The Company has followed the all procedure as required under the applicable laws;
- (c) The Company is in compliance with the applicable laws;
- (d) The Company is consistent with the applicable reporting framework;
- (e) The information presented by the company is relevant, reliable, comparable, and understandable; and
- (f) The company has provided adequate disclosures to enable the intended users to understand the effect of material transactions and events on the information.

FORMS OF OPINION

Unqualified / Unmodified Opinion

An unqualified opinion is also known as a clean opinion. The auditor reports an unqualified opinion if the affairs of the company are presumed to be free from material misstatements. In addition, an unqualified opinion is given over the internal controls of an entity if management has claimed responsibility for its establishment and maintenance, and the auditor has performed fieldwork to test its effectiveness.

An unqualified opinion contains no reservations concerning the company. This is also known as a “clean” opinion, meaning that the affairs of the company are presented fairly.

The Auditor should express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:

- a. there is due compliance with the applicable law in terms of timelines and process; and
- b. the records as relevant for the audit verified by him as a whole are free from misstatement and maintained in accordance with applicable laws.
- c. the auditor should express an unmodified opinion when the auditor concludes that the information on the affairs of the company in all material respects, are in accordance with the applicable reporting framework.

Modified Opinion

Modifications to the Opinion:

The Auditor should express modified opinion when the Auditor concludes that:

- a. based on the Audit Evidence obtained, there is non-compliance with the applicable laws in terms of timelines and process; or
- b. based on the Audit Evidence obtained, the records as a whole are not free from misstatement; or are not maintained in accordance with applicable laws; or
- c. he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process; or
- d. he is unable to obtain sufficient and appropriate Audit Evidence to conclude that the records as a whole are free from misstatement; or are maintained in accordance with applicable laws.
- e. When the auditor has reasons to believe that the affairs of the company are not free from material misstatement or
- f. When the auditor is not able to obtain sufficient appropriate audit evidence.

If the information prepared in accordance with the requirements of a fair presentation framework do not achieve fair presentation, the auditor should discuss the matter with management and, depending on the requirements of the applicable reporting framework and how the matter is resolved, should determine whether it is necessary to modify the opinion in the auditor's report. In case the Auditor expresses a modified opinion or disclaims an opinion, the text of the opinion shall be either in italics or bold letters.

The modification on Opinion can be in the following three categories depending upon the nature and severity/ extremity of the matter under consideration:

- the qualified opinion
- the adverse opinion
- the disclaimer of opinion.

Defining the level of severity is always a subject matter which varies according to the case to case basis and require a judgmental skill in the forming of opinion. The above three categories of the modified opinion can be further elaborated as under:

Qualified Opinion

An Opinion can be considered as a qualified opinion when the auditor specifically provides the additional paragraph or points out the specific instances where the company has failed to do compliance as required under the law, or provides reasons for the not issuing the unqualified report on the affairs of the company

Adverse Opinion

An Opinion can be considered as an adverse opinion, which is considered as the Out of track Opinion, wherein the auditor concluded that the affairs of the company are not in line with its objectives, government rules, and the company has neglected and grossly misstated its records.

An adverse opinion is an indicator of fraud, and public entities that receive an adverse opinion are forced to take corrective measures.

Disclaimer of Opinion

Instances, where the auditor is unable to access the records of the company on any grounds such as geographical reasons, regulatory, natural calamity or could not complete the audit due to absence of requisite

records or insufficient cooperation from management, the auditor issues a disclaimer of opinion. Such opinion is an indication that no opinion was formed by the auditors and the Auditor was not able to conclude that the affairs of the company are conducted in true and fair manner, such disclaimer of opinion is not considered as an opinion itself.

TABLE 1: GUIDANCE AS TO THE USAGE OF THE THREE FORMS OF AUDIT MODIFICATION

	Auditor's judgment about the pervasiveness of the matter	
Nature of the matter	Material but NOT pervasive	Material AND pervasive
Affair of the company are materially misstated	Qualified opinion ('...except for...')	Adverse opinion ('...do not present fairly...')
Unable to obtain sufficient appropriate audit evidence	Qualified opinion ('...except for...')	Disclaimer of opinion ('...we do not express an opinion...')

Emphasis of Matter

Emphasis of matter (EOM) is included in the audit report to seek the attention of the reader, to make the reader aware about the specific instances which are not in the general course of business. Such matters can have the positive as well as negative impact on the affairs of the company in future. The purpose of an EOM paragraph is to draw the users' attention to a matter already disclosed but the auditor believes that, it is fundamental to their understanding and should be a part of the report.

The following are examples of the matters which should be considered as emphasis of matter:

- an uncertainty relating to the future outcome of exceptional litigation or regulatory action;
- when there is uncertainty about exceptional future events, pending litigations
- early adoption of new accounting standards
- adoption of new technology
- recent changes in the regulatory environment
- when a major catastrophe has had a major effect on the financial position.
- early application (where permitted) of a new accounting standard (for example, a new International Financial Reporting Standard) that has a pervasive effect on the financial statements in advance of its effective date; and
- a major catastrophe that has had, or continues to have, a significant effect on the entity's financial position.

Ideally, such matters should be the part of the Directors' Report or the Management Discussion and Analysis report prepared by the company. If the same is not disclosed by the company in the Directors' report or in Management Discussion and Analysis Report, the auditor may opt for placing the same in the Auditor's Report.

Materiality

Materiality is a concept or convention within auditing and accounting relating to the importance/significance of an amount, transaction, or discrepancy in the records of the company. The objective of an audit of financial statements is to enable the auditor to express an opinion whether the financial statements are prepared, in all material respects, in conformity with an identified financial reporting framework such as Generally Accepted Accounting Principles (GAAP).

The assessment of what is material is a matter of professional judgment. Materiality can be defined as the magnitude of an omission or misstatement of information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement.

The auditor has to ensure that material items are properly and distinctly disclosed by the company. It is very important for the auditor who has constantly to judge whether a particular item is material or not. There is an inverse relationship between materiality and the degree of audit risk. The higher the materiality level, the lower the audit risk and vice versa. *For example*, the risk that a particular account balance or class of transactions could be misstated by an extremely large amount might be very low but the risk that it could be misstated by an extremely small amount might be very high.

Materiality is the threshold above which missing or incorrect information is considered to have an impact on the decision making of the Auditor. Information is considered as material if its omission or misstatement could influence the opinion of the Auditor. Materiality can also be construed in terms of net impact.

The Auditor shall consider materiality while forming his opinion and adhere to:

1. The principle of completeness that requires the Auditor to consider all relevant Audit Evidence before issuing a report;
2. The principle of objectivity that requires the Auditor to apply professional judgment and skepticism in order to ensure that all reports are factually correct and that findings or conclusions are presented in a relevant and appropriate manner;
3. The principle of timeliness that implies preparing the report in due time; and
4. The principle of a contradictory process that implies checking the accuracy of facts and incorporating responses from concerned persons.

Third Party Report or Opinion

In the age of composite regulatory environment it is the need of the business to engage experts for the assignment, which is cost effective and provide a time bound result to the company. Same in the case of the auditor, the auditor engages specialized talent for the part of audit work for which in-house talent is not available. This will help auditor to give a complete audit requirement in one go.

Further, as every action has its own reaction, so engaging the third party also provides an additional risk like reputational, control, compliance, privacy, financial, operational and information security risks, even loss of client etc. The Third party reporting may be based on the Assurance based or the factual information. The Auditor should adhere to the following while forming an opinion based on third party reports or opinions:

- a. The Auditor should indicate the fact of use of third party report or opinion and should also record the circumstances necessitating the use of third party report or opinion;
- b. The Auditor should indicate the fact if third party report or opinion is provided by the Auditee;
- c. The Auditor should consider the important findings/observation of third party;
- d. The Auditor should, if necessary and feasible, carry out a supplemental test to check veracity of the third party report or opinion.

Management Representation Letter

The auditor may obtain a management representation letter from the auditee company. The letter may be signed by Managing Director/ Company Secretary/Senior Management who would normally have authority to issue the same. Suggested format of the management representation letter is provided below. The format may

be adopted with changes, depending on the circumstances and facts governing every audit. The Auditor can use this letter of representation as part of his audit evidence.

However, it 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.

Specimen Management Representation Letter for Secretarial Audit

Note: 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, Date:

Company Secretaries,

ZYZ Road, India

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. All the entries in the Statutory Registers have been made within the prescribed time as per the provisions of the law whenever necessary. All the Statutory registers have been kept at the registered office of the company and 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 those recorded in the Minutes.

9. The views of all the dissenting Directors (if any) on important matters have been captured and recorded in the minute.
10. The venue and time of Board meeting was finalized with the consultation of all board members.
11. Draft Minutes and final minutes were properly sent to all the directors.
12. Company has not obtained any secured loan from any financial institution/banks other than those mentioned in the register of charges.
13. Notice of annual general meeting has been duly sent to all the members, Directors, Statutory Auditor and Secretarial Auditors.
14. No show cause notice has been received by the company under the Acts referred above or any other laws applicable on the company.
15. There are no pending litigation and claims other than those reported in the Financial Statements - balance sheet by way of contingent liability.
16. 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. We have provided to you all relevant information and have given access to all data and records.
17. The company has altered the memorandum/ articles of Association and have recorded the alterations in all copies of the Memorandum / Articles of Association.
18. Wherever the Share certificates were issued in the physical form, they were issued in accordance with the provisions of the Companies Act, 2013 and the rules thereunder.

Securities Laws

1. All Price Sensitive Information was informed to the stock exchanges from time to time
2. All investors complaints 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.

Environmental Laws

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

344 PP-SACM&DD

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

Date:

[For XYZ Limited]

Place:

Director

Opinion obtained by Management

In the certain situations, upon the remarks of the auditors the management of the company may submit its replies which are supported by the opinion provided by the third party. In such cases the reliance on such opinion should be made by the auditor on his professional judgment and the company may provide the explanation such qualifications in the Directors' report.

In case where the information produced by the company as audit evidence, the auditor should evaluate whether the information is sufficient and appropriate for purposes of the audit by performing procedures to:

- a. Test the accuracy and completeness of the information, or test the controls over the accuracy and completeness of that information; and
- b. Evaluate whether the information is sufficiently precise and detailed for the purposes of the audit.

Exit Conference

While concluding the audit, the auditor should conduct a meeting with the management of the company or with the group supervisory officers. The audit observations should preferably be shared with such official beforehand for providing the opportunity to discuss the audit finding and to clarify any point relating to audit and audit observations.

Evaluation of Audit Evidence and Forming Opinion

The Audit evidence plays a significant role in forming of Opinion. Based on such evidence the auditors form his opinion in the report, accordingly the auditor should obtain competent, relevant and reasonable evidence to support his judgement and conclusions.

The competent evidence is information which is quantitatively sufficient and appropriate to achieve the auditing results and is qualitatively impartial to inspire confidence and reliability.

The Reliable audit evidence is evidence that is impartial, the reliability of audit evidence is dependent upon its nature, its source and the method used to obtain it. While collecting the audit evidence the auditor should consider that

- Documentary evidence is more reliable than oral evidence
- Evidence of which the auditor has direct personal knowledge is the most reliable evidence
- Independent evidence obtained for external sources is more reliable than internal evidence, if that evidence is truly Independent and complete.
- Visual evidence is highly reliable for conforming the existence of assets, but not their ownership value.
- Drawing conclusions solely through examining relationship between figures in the account (analytics Review) is less reliable evidence
- Oral evidence must be considered as the least reliable, whenever feasible .auditor should attempt to

obtain documentary confirmation of oral evidence.

- The reliability of information generated within the auditee entity is a function of the reliability of internal control systems within the entity.
- Photocopies are less reliable than the originals, the source of photocopies should be identified by noting the source as far as possible the photocopies should be certified
- Evidence, which is accepted by the auditee entity, is always reliable
- The auditor may gain increased assurance when audit evidence obtained from different source is consistent.

Sharing draft report with management with category of risk involved with each remark and Qualification

After the exit meeting and the completion of the audit procedures, the auditor should prepare an Executive summary of audit findings. The summary explains the key audit issues, the category of risk, their resolution, agreed adjustments. After discussing the executive summary the audit certificate should be signed by the auditor and by the management or person authorized by the management of the company.

The executive summary is a high level summary, which explains audit findings, while it is a concise document; it should contain sufficient information to stand alone as a summary of the evidence which supports audit team's conclusion on the appropriate form of audit certificate. The executive summary should include:

- i. a summary of the auditee's operations and purpose;
- ii. a summary of the regularly framework within which the auditee operates;
- iii. an explanations of the audit approach and the balance between test of controls and substantive procedures;
- iv. a summary of the key risk identified;
- v. a commentary on key balances;
- vi. a commentary on the accounting policies and significant account areas;
- vii. a summary of the result of audit procedures;
- viii. details of areas where difficult questions of principle or judgement were involved;
- ix. matters brought forward from previous year audit;
- x. a summary of other important matters for attention;
- xi. outstanding matters, for example, outstanding reappointment orders or letter authorising agreed amendment s to the financial statement;
- xii. a summary of matters carried forward to the next years audit; and
- xiii. a conclusion on the appropriate form of audit certificate.

The report should clearly mention the process name; significant and findings with respect to the criteria; analysis of the consequences of the findings; and recommendations of the auditor. Each observation should be supported by a set of facts and each recommendation to the management should be supported by a business reasons for implementation.

Further, the replies on the auditor's observations and recommendation /comments of the management of the Auditee's company should be obtained and should be recorded in the audit file. Also in case where the auditor opinion is other than the unmodified opinion, the full rationale should be given in the executive summary.

Different stages of communication and discussion should be as under:

1. **Preliminary Draft:** At the conclusion of fieldwork, the auditor should draft the report and present it to the entity's management for auditee's comments.
2. **Exit Meeting:** The auditor should discuss with the management the findings, observations, recommendations, and text of draft and obtain their comment on the draft, achieve consensus and reach an agreement on the audit findings.
3. **Formal Draft:** The auditor should prepare a formal draft, in view of the outcome of the exit meeting and other discussions. Upon review of such changes by the auditor and the management, the final report should be issued.
4. **Final Report:** The report should be submitted to the appointing authority or such members of management, as directed.

Auditor's Responsibility

The auditor's report should include a section with the heading "Auditor's Responsibility". Auditor's report shall state that the responsibility of the auditor is to express the opinion on the compliance with the applicable laws and maintenance of records based on audit. The auditor's report shall also state that the audit was conducted in accordance with applicable standard, if any. The auditor's report shall also explain that those standards require that the auditor should comply with statutory and regulatory requirements and plan and perform the audit to obtain reasonable assurance about compliance with applicable laws and maintenance of records.

Auditor's Report should state that due to the inherent limitations of an audit including internal, financial and operating controls, there is an unavoidable risk that some material misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the standards.

Format of Report

The report shall be addressed to the Appointing Authority unless otherwise specified in Audit Engagement Letter or provided in the applicable law. The report shall be detailed enough to serve its intended purpose. Where specific formats (like MR-3 for Secretarial Audit Report) are prescribed, those formats shall be followed for reporting. If any information cannot be conveniently captured within the paragraphs of the report, it shall be given in the form of annexure(s).

Signature block shall mention the name of the audit firm, the name of the Auditor, along with certificate of practice number, the membership number of the Auditor specifying whether associate or fellow member. The auditor shall clearly mention date and place of signing the report. In case report is signed by two different persons on different dates or different places; same shall be mentioned in the report.

Limitation

If, after accepting the audit engagement, the appointing authority imposes a limitation on the scope of the audit which, in the opinion of the auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the auditor shall request the appointing authority to remove the limitation.

If the appointing authority refuses or fails to remove the limitation, the auditor shall communicate the matter to the management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate audit evidence.

If the auditor is unable to obtain sufficient and appropriate audit evidence, the auditor shall determine the implications as follows:

- a. If the auditor concludes that the possible effects of unavailable audit evidence could be non-material,

the auditor shall qualify the opinion; or

- b. If the auditor concludes that the possible effects of unavailable audit evidence could be material, the auditor shall express disclaimer of opinion.

Pre requisite for the Reporting:

An Audit report should:

- **Accurate** - Free from errors and distortions and faithful to the underlying facts.
- **Objective** - Fair, impartial, and unbiased and is a result of a fair minded and balanced assessment of all relevant facts and circumstances.
- **Clear** - Easily understood and logical, avoiding unnecessary technical language and providing all significant and relevant information.
- **Concise** - To the point, avoid unnecessary elaboration, superfluous detail, redundancy, repetitiveness and wordiness.
- **Constructive** - Helpful to the engagement client and the organization and leads to improvements where needed.
- **Complete** - Lacking nothing that is essential to the target audience and includes all significant and relevant information and observations to support recommendations and conclusions.
- **Timely** - Opportune and expedient, depending on the significance of the issue, allowing management to take appropriate corrective action.

Submission of Audit Report

After considering the clarifications/replies of the management, the auditor should prepare the audit report in prescribed format. Sometimes 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.

Signing of Audit Report

The auditor's signature is either in the name of the audit firm, the personal name of the auditor or both, as appropriate for the particular jurisdiction. In addition to the auditor's signature, in certain jurisdictions, the auditor may be required to declare in the auditor's report the auditor's professional accountancy designation or the fact that the auditor or firm, as appropriate, has been recognized by the appropriate licensing authority in that jurisdiction.

However, in case of secretarial audit report the 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 along with 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 auditor at the relevant places in his report in bold type or in italics.

2. If the 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.
4. If such limitations are so material that the Auditor is unable to express any opinion, the 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 report prepared under section 134(3) of the Companies Act, 2013, shall provide and explanation in full on any qualification or observation or other remarks made by the company secretary in practice in the secretarial audit report.

LESSON ROUND UP

- An unqualified opinion contains no reservations concerning the company. This is also known as a “clean” opinion, meaning that the affairs of the company are presented fairly.
- The auditor should express modified opinion when the auditor concludes that there is non-compliance, records as a whole are not free from misstatement, with the applicable laws in terms of timelines and process; etc.
- The modification on opinion can be in the following three categories depending upon the nature and severity / extremity of the matter under consideration: the qualified opinion; the adverse opinion; the disclaimer of opinion.
- The auditor should obtain audit evidence which are competent, relevant and reasonable evidence to support his judgement and conclusions.
- An Audit report should be Accurate, Clear, Concise, Constructive and Complete.

SELF-TEST QUESTIONS

(These are meant for recapitulation only, answer to these questions are not to be submitted for evaluation)

1. What do you mean Audit opinion and describe the various forms of auditor's opinion?
2. Explain under what circumstances the auditor should express the qualified opinion and how the Auditor should express the same in the audit report.
3. Explain the manner for signing of secretarial audit report.

Lesson 16

Secretarial Audit – Fraud Detection and Reporting

LESSON OUTLINE

- Introduction
- Types of Frauds
- Procedure for Reporting of Fraud
- Fraud v/s Non compliance
- Speculation
- Suspicion
- Professional Responsibilities
- Early Warning Signals (EWS)
- Investigation by SFIO
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Under Section 143 (12) of the Companies Act, 2013, 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 need to report the matter to the Central Government.

However, the fraud involving lesser than rupees one crore shall be reported to the Audit Committee or to the Board immediately but not later than two days of his knowledge of the fraud.

The lesson covers the various aspect of the reporting of the fraud with the specific reference to the Secretarial Audit.

INTRODUCTION

In general, the term Fraud can be defined as 'dishonestly obtaining a benefit, or causing a loss, by deception or other means. More specifically, *fraud* is defined by *Black's Law Dictionary* as:

1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.
2. A misrepresentation made recklessly without belief in its truth to induce another person to act.
3. A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment.
4. Unconscionable dealing; in contract law, the unfair use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain."

Consequently, fraud includes any intentional or deliberate act to deprive another's property or money by guile, deception, or other unfair means.

Frauds under explanation to section 447 defined as under:

- (i) "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 manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

TYPES OF FRAUD

Fraud against a company can be committed either internally by employees, managers, officers, or owners of the company, or externally by customers, vendors, and other parties. Accordingly, the fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury.

The financial & accounting fraud include the fraud relating to the financial statement by Overstating revenue, earnings and assets – along with understating liabilities (or just plain concealing them) are the most common activities found with this type of fraud. The asset misappropriation is also a most susceptible fraud in the companies which are closely held. Further the tampering, accounts receivable skimming, fake billing schemes, payroll schemes, fake or duplicate expense reimbursement schemes and inventory schemes are also the part of the financial and accounting fraud. Also the misuse of company assets is one of the problematic and serious kinds of fraud, as the unauthorized use of company assets, significant open up the company to liability. Also under the growing technology and easy exchange of information and technology, the chances of the theft of intellectual property and trade secrets are increased and such fraud damage the position of the company in the market and the Research activities.

In case of the Non-financial fraud, the fraud includes the false or misleading information, inadequate disclosure produced by the Company to the public or regulatory bodies, false reporting of governance norms and doing business surpassing the regulatory requirement and approvals from the shareholders.

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, or to the Audit Committee or the Board.

Duty of Report Fraud to Central Government

The section 143(12) read with the Companies (Audit and Auditors) Rules, 2014 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.

Duty of Report Fraud to Audit Committee/ Board

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 two 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
- (c) Parties involved.

Disclosures in the Board's Report

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.

Consequence on failure in Reporting of fraud

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, section 143(13) 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

(i) 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-IIA - 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 forty five 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 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;
- contact number (telephone/ mobile);
- signed by the auditor with his seal;
- indicate his membership number;
- Report shall be in the form of a statement as specified in Form ADT-4.

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

As per the Sub-rule (3) of Rule 13 of the Companies (Audit and Auditors) Rules, 2014 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

In the matter of *Globe Motors Limited v. Mehta Teja Singh & Company* the Delhi High court observed 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.

“Fraud” in relation to affairs of a company or anybody corporate includes any act, omission, concealment of any factor abuse of position committed by any person or any other person with the connivance in any 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.

On perusal explanation under section 447 of the Companies Act, 2013, the fraud covers:

- (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.

During the performance of the secretarial audit, the practicing company secretary should examine the various transactions during the period of audit to identify whether any element in the transaction may result to a fraud in the company.

Transaction which may involve the fraud

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

Other means of Corporate fraud are the inadequate disclosures, false or misleading information, 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.

Who is considered as an Auditor for Fraud Reporting

The auditor includes the

- Statutory Auditors of the company appointed under section 139 of the Companies Act, 2013,
- Company Secretary in practice conducting Secretarial Audit under section 204 of the Companies Act, 2013,
- Cost Accountant in practice conducting cost audit under section 148 of the Companies Act, 2013 and the Branch Auditors appointed under section 139 of the Companies Act, 2013.

However the Internal Auditor or such other professionals appointed under any other statutes rendering other services to the company such as a tax auditor appointed under Income tax act, GST auditors appointed under the respective GST legislations are not covered under section 143 of the Companies Act, 2013.

Reporting of Fraud already reported by the management

The frauds which are already identified by the management should also be considered by the secretarial auditors and should review the impact of such fraud on the company in line with his scope of audit engagements.

The Auditor should also review the steps taken by the management. On dissatisfaction, the auditor may state reasons and request the management to perform additional procedures. If additional procedures are not performed within forty five days of request, consider reporting the matter to the central government.

Reporting of Fraud by Secretarial Auditor already reported by other auditors

The Companies Act, 2013 has provided the duties and responsibilities of the each of the auditors such as for Accounting/ Financial related fraud the statutory auditors shall report, while in case of Non-financial fraud the Secretarial Auditor and in case of the fraud relating to the costing Fraud it needs to be reported by the Cost accountant in practice.

Instances may appear of a fraud in which the impact of such fraud is extending to area covered by all the auditors. In such cases, all the auditors should report such fraud in the manner prescribed under the act.

FRAUD V/S NON COMPLIANCE

The term fraud can be defined as act or course of deception, an intentional concealment, omission, or perversion of truth, to

- (1) gain unlawful or unfair advantage,
- (2) induce another to part with some valuable item or surrender a legal right, or
- (3) inflict injury in some manner.

Willful fraud is a criminal offense which calls for severe penalties, and its prosecution and punishment. However, incompetence or negligence in managing a business or even a reckless waste of firm's assets (for example by speculating on the stock market) does not normally constitute a fraud.

Non Compliance: the term non-compliance refers to failure to comply with the laws, rules regulations etc., the term non-compliance is commonly used in regard to a failure to meet the compliance requirements or failure to doing compliance be it the failure in following procedures, filing of information, eligibility conditions, reporting etc.

The relationship between the Fraud and the non-compliance can be constructed as the non- compliance in the company may lead to a fraud however it may also be noted that the fraud can also be made in the compliant company.

SPECULATION

The term Speculation is defined as act of trading in an asset or conducting a financial transaction that has a significant risk of losing most or all of the initial outlay with the expectation of a substantial gain. With speculation, the risk of loss is more than offset by the possibility of a huge gain, otherwise there would be very little motivation to speculate. It may sometimes be difficult to distinguish between speculation and investment, and whether an activity qualifies as speculative or investing can depend on a number of factors, including the nature of the asset, the expected duration of the holding period, and the amount of leverage.

Such as the Foreign Exchange Market, Bond Market, Stock Market and Specially the derivatives segment which comprises of futures and options contracts which is typically used by brokerages and high net worth individuals to bet on the direction of the markets. Due to this the Indian capital markets have tilted towards speculative instruments having implications of a high level of speculative trading activity compared to investment activity.

SUSPICION

Suspicion is the positive tendency to doubt the trustworthiness of appearances and therefore to believe that one has detected possibilities of something unreliable, unfavorable.

The following transactions relating to company formation and management may be considered as the suspicious transactions which may or may not be with the group companies, where the detailed audit is need to be performed are:

1. subsidiaries which have no apparent purpose;
2. companies which continuously make substantial losses;
3. complex group structures without cause;
4. uneconomic group structures for tax purposes;
5. frequent changes in shareholders and directors;
6. unexplained transfers of significant sums through several bank accounts;
7. use of bank accounts in several currencies without reason;
8. purchase of companies which have no obvious commercial purpose;
9. sales invoice totals exceeding known value of goods;

10. makes unusually large cash payments in relation to business activities which would normally be paid by cheques, banker's drafts etc; and
11. transferring large sums of money to or from overseas locations with instructions for payment in cash;

DETECTION OF FRAUD

The auditor shall exercise professional judgment and maintain professional scepticism throughout the planning and performance of the audit to detect and report the fraud envisaged under the provisions of section 143 (12) of the Companies Act, 2013 read with Companies (Audit and Auditors) Rules, 2014. The auditor may communicate directly with the internal auditors and statutory auditors to verify whether they have suspected/identified any fraud during the course of their audit.

During the course of the audit, if the Auditor suspects any commission of fraud, he shall endeavour to collect further evidence for the same. The suspicion may arise on perusal of internal control systems, complaint under whistle blower mechanism, and reports of the other auditors, etc. The auditor should ensure to collect sufficient evidence which substantiates his suspicion of the commission of the fraud against the auditee by its employees and officers.

PROFESSIONAL RESPONSIBILITY AND PENALTY FOR INCORRECT AUDIT REPORT

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.

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 Rs.10,00,000 or 1% of the turnover of the company, whichever 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 fifty lakh rupees or with both.

In view of this, a company secretary in practice will be attracting the penal provisions of section 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 punishment, 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(4) of the Companies Act, 2013 provides that if company secretary in practice contravenes the provisions of section 204, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

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.

EARLY WARNING SIGNALS OF FRAUDS DETECTIONS

The auditors may take some clues from the Reserve Bank of India (Frauds classification and reporting by commercial banks and select FIs) directions, 2016 along with the other reasons which provides an Early Warning Signals (EWS) for to be alert that some of the wrong doing in the company which are as under:

1. Default in undisputed payment to the statutory bodies as declared in the Annual report.
2. Bouncing of high value cheques
3. Frequent change in the scope of the project to be undertaken by the borrower
4. Foreign bills remaining outstanding with the bank for a long time and tendency for bills to remain overdue.
5. Delay observed in payment of outstanding dues.
6. Frequent invocation of BGs and devolvement of LCs.
7. Under insured or over insured inventory.
8. Invoices devoid of TAN and other details.
9. Dispute on title of collateral securities.
10. Funds coming from other banks to liquidate the outstanding loan amount unless in normal course.
11. In merchanting trade, import leg not revealed to the bank.
12. Request received from the borrower to postpone the inspection of the godown for flimsy reasons.
13. Funding of the interest by sanctioning additional facilities.
14. Exclusive collateral charged to a number of lenders without NOC of existing charge holders.
15. Concealment of certain vital documents like master agreement, insurance coverage.
16. Floating front / associate companies by investing borrowed money
17. Critical issues highlighted in the stock audit report.
18. Liabilities appearing in ROC search report, not reported by the borrower in its annual report
19. Frequent request for general purpose loans.

20. Frequent ad hoc sanctions.
21. Not routing of sales proceeds through consortium I member bank/ lenders to the company.
22. LCs issued for local trade I related party transactions without underlying trade transaction
23. High value RTGS payment to unrelated parties.
24. Heavy cash withdrawal in loan accounts.
25. Non production of original bills for verification upon request.
26. Significant movements in inventory, disproportionately differing vis-a-vis change in the turnover.
27. Significant movements in receivables, disproportionately differing vis-à-vis change in the turnover and/ or increase in ageing of the receivables
28. Disproportionate change in other current assets
29. Significant increase in working capital borrowing as percentage of turnover
30. Increase in Fixed Assets, without corresponding increase in long term sources (when project is implemented).
31. Increase in borrowings, despite huge cash and cash equivalents in the borrower's balance sheet
32. Frequent change in accounting period and/or accounting policies
33. Costing of the project which is in wide variance with standard cost of installation of the project
34. Claims not acknowledged as debt high
35. Substantial increase in unbilled revenue year after year.
36. Large number of transactions with inter-connected companies and large outstanding from such companies
37. Substantial related party transactions
38. Material discrepancies in the annual report
39. Significant inconsistencies within the annual report (between various sections)
40. Poor disclosure of materially adverse information and no qualification by the statutory auditors
41. Raid by Income tax /sales tax/ central excise duty officials
42. Significant reduction in the stake of promoter /director or increase in the encumbered shares of promoter/ director.
43. Resignation of the key personnel and frequent changes in the management
44. Delayed filing of statutory returns
45. Frequent resignation of Auditors
46. Frequent changes in the Independent Directors

INVESTIGATION OF FRAUD BY SFIO

Serious Fraud Investigation Office (SFIO) has been established through the Government of India vide Notification NO. S.O.2005 (E) dated 21.07.2015. Earlier the SFIO was set up by Government of India vide Resolution NO. 45011/16/2003-Admn.I dated 02.07.2003. It is a multi- disciplinary organization under the Ministry of Corporate Affairs, of experts in the field of accountancy, forensic auditing, law, information technology, investigation,

company law, capital market and taxation etc. for detecting and prosecuting or recommending for prosecution while collar crimes/frauds.

SFIO is headed by a Director as Head of Department in the rank of Joint Secretary to the Government of India. The Director is assisted by Additional Directors, Joint Directors, and Deputy Directors, Senior Assistant Directors, Assistant Directors, Prosecutors and other secretarial staff. The Headquarter of SFIO is at New Delhi, with five Regional Offices at Mumbai, New Delhi, Chennai, Hyderabad & Kolkata.

Investigation into the affairs of a company is assigned to SFIO, where Government is of the opinion that it is necessary to investigate into the affairs of a company –

1. on receipt of a report of the registrar or inspector under section 208 of the Companies Act, 2013;
2. on intimation of a special resolution passed by a company that its affairs are required to be investigated;
3. in the public interest; or
4. on request from any department of the Central Government or a State Government

The powers and duties of the officers and employees SFIO is a multi-disciplinary investigation office having experts from various fields viz. financial sector, capital market, accountancy, forensic audit, taxation, law, information technology etc.

By virtue of Companies Act, 2013, SFIO has been accorded statutory status and the scope of reference to SFIO for investigation into the affairs of a corporate by Central Government has been enlarged to include cases involving 'Public Interest' and also on request from any Department of Central/State Government.

Procedure for decision making process, including channels of supervision and accountability

As the investigations are carried out under the provisions of the Companies Act, the Officer of SFIO appointed as Investigating Officer (IO) by the Government has the final say in the matter related to investigation. The working groups of the officers constituted by the Director, SFIO in consultation with the I.O. to assist the Investigating Officer are required to render him all possible assistance in the respective areas of their specialization so that the issues are examined from a multidisciplinary angle. He supervises the entire investigation and coordinates with subject specific team leaders in the matters related thereto. The Investigating Officer, after conclusion of his investigation, submits the Investigation Report to the Central Government in the Ministry of Corporate Affairs.

For smooth functioning of the administration of the office, the Director, SFIO has been declared as 'Head of Department' (HOD). He exercises powers of HOD. Under him there is an administration division headed by a Deputy Director.

Manner of discharging functions of SFIO

For each investigation that is to be carried out by the officers of SFIO, the Central Government while ordering the same assigns a time frame. The investigation has to be completed within that time frame.

The subject specific groups of officers which render necessary assistance to the Investigating Officer have to examine the issues involved in the case within a given time frame and give requisite inputs to the Investigating Officer.

Since the organization is engaged in investigation, the law governing investigation and other related laws such as Criminal Procedure Code, Evidence Act, various manuals and Laws on taxation, import and export, banking, stock market etc., are used by the officers of this organization.

LESSON ROUND UP

- The Accounting/ Financial related fraud shall be reported the statutory auditors, whereas in case of Non-financial fraud the Secretarial Auditor and in case of the fraud relating to the costing Fraud it needs to be reported by the Cost accountant in practice.
- Suspicion is the positive tendency to doubt the trustworthiness of appearances and therefore to believe that one has detected possibilities of something unreliable, unfavorable
- Early Warning Signals (EWS) are the caution for the auditor, which provide an alert that there is some wrong doing in the company.
- SFIO is a multi-disciplinary investigation office having experts from various fields viz. financial sector, capital market, accountancy, forensic audit, taxation, law, information technology etc.

SELF-TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. As a practicing company secretary, how would you respond when fraud is detected during Secretarial Audit?
2. Define the various Early Warning Signals of the fraud.
3. Discuss the professional responsibility and penalty for incorrect audit report under the Companies Act, 2013.
4. Define the term Suspicion and Speculation.

[illegible]

Lesson 17

Quality Review

LESSON OUTLINE

- Introduction
- Peer Review for Company Secretaries
- Objective & Benefits of Peer Review
- Scope of Peer Review
- Process of Peer Review
- Quality Review Board
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Peer Review is directed towards maintenance as well as enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements.

The Quality Review Board has been set up to review and enhance the quality of the services rendered by the members of the ICSI. The Board aims to standardize the practices followed by the Company Secretaries and enhance the quality of the services rendered by the members of ICSI on continuous basis.

The lesson covers the detailed systems and procedures relating to the Peer review and the guideline issued by the quality review board of ICSI.

PEER REVIEW - DEFINITION

The dictionary meaning of the term “peer” is, a person of the same legal status or a person who is equal to another in abilities, qualifications, age, background, etc. “Review” means to look back upon (a period of time, sequence of events, etc.) Thus, “peer review” is a self-improvement process and is a method of evaluation of a person’s work or performance by a group of people in the same occupation, profession, or industry.

Professional peer review focuses on the performance of professionals, with a view to improving quality, upholding standards, or providing certification. Professional peer review activity is widespread in the field of accounting, law, engineering (e.g., software peer review, technical peer review), aviation, and even forest fire management. In academia, peer review is common in decisions related to faculty advancement and tenure.

Peer review for Company Secretaries

Peer review contemplates examination of the systems and approach of a Practice Unit (PU) by another member of the Institute with the objective of identifying the areas, where the practicing member may require guidance in improving the quality of his performance and adherence to the requirements of various technical standards.

The focus lies on the promotion of continuing quality improvement in an atmosphere of openness and mutual trust that contributes to enhancing transparency and comparability. Good practice is valued and mutual learning encouraged in a dynamic and motivating process, from which both the PU and Reviewer can benefit.

A Peer review examines whether a Practice Unit (PU) has adequate policies and procedures in place to comply with the Technical Standards of ICSI and other legal requirements.

Rationale of Peer Review

The concept of whole-time practice, which received its initial statutory recognition in 1988, has gained momentum after the enactment of the Companies (Amendment) Act, 2000 which required compliance certificate to be issued by a practicing company secretary for companies having a prescribed paid up capital. Company secretaries in practice are also being recognised for issuing certificates under various laws.

Excellence is the hallmark of success in a competitive environment. Performance can be judged and enhanced to a level of excellence only by evaluation by a competent professional. The council of the institute, therefore, decided to introduce peer review for practicing company secretaries (PCS) to periodically evaluate the quality, sufficiency of systems, procedures and practices, so that excellence in their performance is maintained.

Authority for Peer Review

The Council of the Institute of Company Secretaries of India is constituted under the Company Secretaries Act, 1980 for discharging the functions assigned to the Institute under the Act. Section 15 of the Company Secretaries Act, 1980 provides that “the duties of carrying out the provisions of this Act shall be vested in the Council” and enumerates various duties of the Council. With a view to regulate the profession of Company Secretaries and in terms of the powers vested, the Council has issued guidelines for Peer Review of Attestation Services by Practising Company Secretaries. The guidelines serve as a mechanism intended to further enhance the quality of professional work of Practising Company Secretaries (PCS) over a period of time, thereby ensuring that the profession of Company Secretaries continues to serve the society in the manner envisaged.

The Guidelines on Peer Review are issued in relation to conduct of members in attestation services:

- to promulgate an appropriate mechanism for ensuring the quality of attestation services and guide the members to conduct themselves in a manner that the Council considers appropriate;
- to provide guidance in relation to the statutory powers and obligations with respect to the parties involved in peer review;

- to prescribe the scope of peer review and the procedures to be adopted during the conduct of a peer review; and
- to establish the expected conduct of members during a peer review.

OBJECTIVES OF PEER REVIEW

The main objective of peer review is to ensure that in carrying out their services, the PCS has complied with the technical standards laid down by the Institute and has in place proper systems (including documentation systems) for maintaining the quality of the services/ work they provide. The Council has specified the technical standards in relation to which peer review is to be carried out in the guidelines for peer review of attestation services by practising company secretaries. Peer review does not seek to redefine the scope and authority of the technical standards specified by the council but seeks to enforce them within the parameters prescribed by the technical standards.

Peer review is directed towards maintenance as well as enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements. Essentially, through a review of attestation services engagement records, peer review identifies the areas where a practising member may require guidance in improving the quality of his performance and adherence to various requirements as per applicable technical standards and regulatory requirements.

Benefits of Peer Review

There are significant benefits which a Practice Unit will obtain in undergoing a Peer Review. These may be summarised below:

1. A successful peer review will provide comfort to the PU that he has adhered to various statutory, documentary and other regulatory requirements.
2. If deficiencies are noticed and corrective measures suggested, the PU will have an opportunity to correct the deficiencies and thereby enhance his professional competence.
3. If a Peer Review Certificate is issued in favour of the PU it enhances his credibility in the eyes of the general public.
4. Since a Chinese wall exists between the Peer Review Process and the Disciplinary Proceedings, the PU will benefit from peer review without any apprehension of any disciplinary proceedings being initiated against him for any deficiencies noticed on his part.
5. Clients of the PU will benefit from knowing that their PU is periodically reviewed by the ICSI.

SCOPE OF PEER REVIEW

Under the scope of Peer review, the following attestation services are covered:

- a. Signing of Annual Return pursuant to proviso to sub-section (1) of section 92 of the Companies Act, 2013 in form MGT -7.
- b. Certification of Annual Return pursuant to sub-section (2) of section 92 of the Companies Act, 2013 in Form MGT- 8.
- c. Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013
- d. Issuance of Certificate of Securities Transfers in Compliance with Regulation 40(9) of the SEBI LODR Regulations.
- e. Certificate of reconciliation of share capital Audit, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D & CC/Cir-16/2002 dated December 31, 2002.

- f. Conduct of Internal Audit of Operations of the Depository Participants.
- g. Compliance Certificate regarding compliance of conditions of Corporate Governance to be annexed with the Director Reports prescribed under Schedule V of the SEBI (LODR) Regulations.

However, the Council and the Peer Review Board may include attestation services necessitate certification in other areas also in due course under the scope of Peer Review from time to time due to the change in laws or by the regulatory prescriptions.

Recent Amendments in Guidelines for mandatory Peer Review for rendering certain Professional Services.

The ceiling on number of Annual Secretarial Compliance Reports to be issued by PCS is 5 (five) reports individually/ per partner in each financial year w.e.f. April 1, 2020 and an additional limit of 5 (five) Secretarial Compliance Reports individually/ per partner in case the Unit has been Peer Reviewed.

The Council has approved the recommendations of the Peer Review Board making Peer Review mandatory for rendering Professional Services viz. Secretarial Audit, Secretarial Compliance Report under SEBI (LODR) and Diligence Reports for Banks and it has decided to issue the following Guidelines:-

- (a) Secretarial Audit / Annual Secretarial Compliance Report under SEBI (LODR) of Top 100 companies as per market capitalisation to be undertaken only by Peer Reviewed PCS w.e.f. April 1, 2020;
- (b) Secretarial Audit / Annual Secretarial Compliance Report under SEBI (LODR) of Top 500 companies as per market capitalisation to be undertaken only by Peer Reviewed PCS w.e.f. April 1, 2021;
- (c) Secretarial Audit / Annual Secretarial Compliance Report under SEBI (LODR) of all listed companies to be undertaken only by Peer Reviewed PCS w.e.f. April 1, 2022;
- (d) Secretarial Audit of all companies to be undertaken only by Peer Reviewed PCS w.e.f. April 1, 2023;
- (e) Issuance of Diligence Report for banks in case of Consortium Lending / Multiple Banking Arrangements to be undertaken only by Peer Reviewed PCS w.e.f. April 1, 2020.

Qualifications for Peer Reviewer

The eligibility for become a Peer Reviewer need to be a Member of the Institute who should—

- a) Possess at least 10 years of post-membership experience
- b) Be currently in whole time practice as a Company Secretary.

The Reviewer's Approach

The approach of the Reviewer should be courteous, professional and helpful throughout the review process. He should be appreciative of good practices while suggesting areas of improvement and should adopt a collaborative approach with the PU during the review process and should ensure minimum disruption to the PU during the peer review.

The peer reviewer should able to provide practical and insightful comments in a discussion mode as a Peer during the review process and should provide value addition to PU and not merely adopt a tick box approach.

In determining issues which are subjective, the purpose is not to replace the PU's opinion with the opinion of the Reviewer but to verify the process followed in exercise of judgments by the PU. Verification of the process will include verification of working papers maintained by the PU.

Expected Qualities of Reviewer

The nature and complexities of peer review requires the exercise of professional judgment. The reviewer should:

- Be well acquainted with the technical aspects of the attestation services.
- Know the provisions of Code of Conduct of ICSI.
- Have studied various cases decided on Code of Conduct of ICSI.
- Get himself/herself acquainted with decisions of various courts on 'cases relating to deficiency in service'.
- Be aware of relevant provisions of CS Act 1980, Consumer Protection Act, Evidence Act, IPC, etc.
- Have studied the technical standards like Secretarial Standards, Guidance Notes, Notifications and Guidelines issued by Council of ICSI.
- Be aware of evolving standards and best practices in the field.
- Be good at drafting, written and spoken English.
- Display professional and courteous behavior while on peer review visit.
- Understand his limitations.
- Be clear about what is outside the scope of Peer Review.

PEER REVIEW PROCESS

Once a practice unit is selected for review, its attestation engagement records pertaining to the immediately preceding financial year shall be subjected to review.

The Review shall focus on:

- I. Compliance with Technical Standards.
- II. Quality of Reporting or Attestation services.
- III. Office systems and procedures with regard to compliance of services including appropriate infrastructure.
- IV. Training and capacity building Programs for staff (particularly, the Apprentice Trainees)

Applicability of the Guidelines on Peer Review

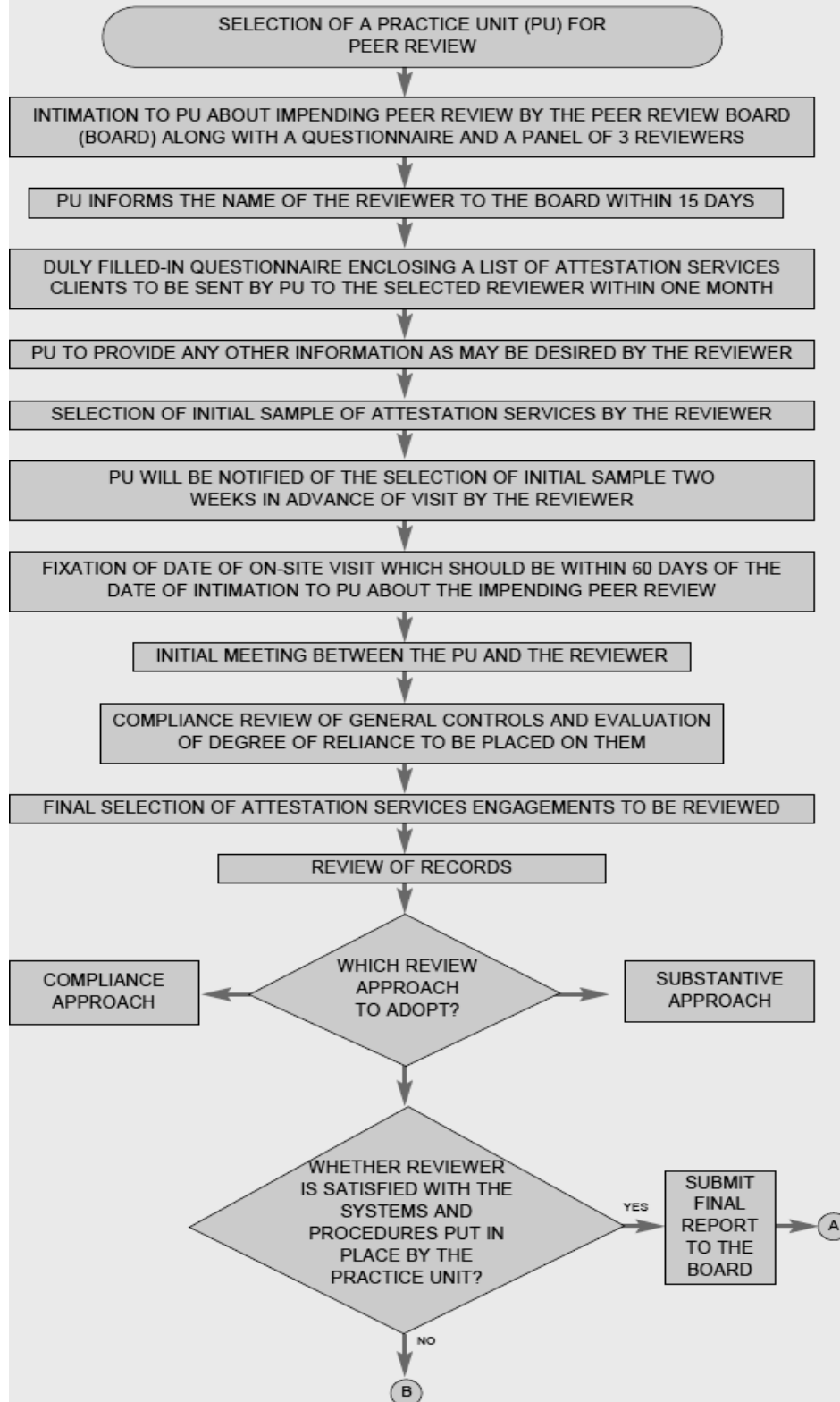
The guidelines on Peer Review shall apply to all or any of the following cases:

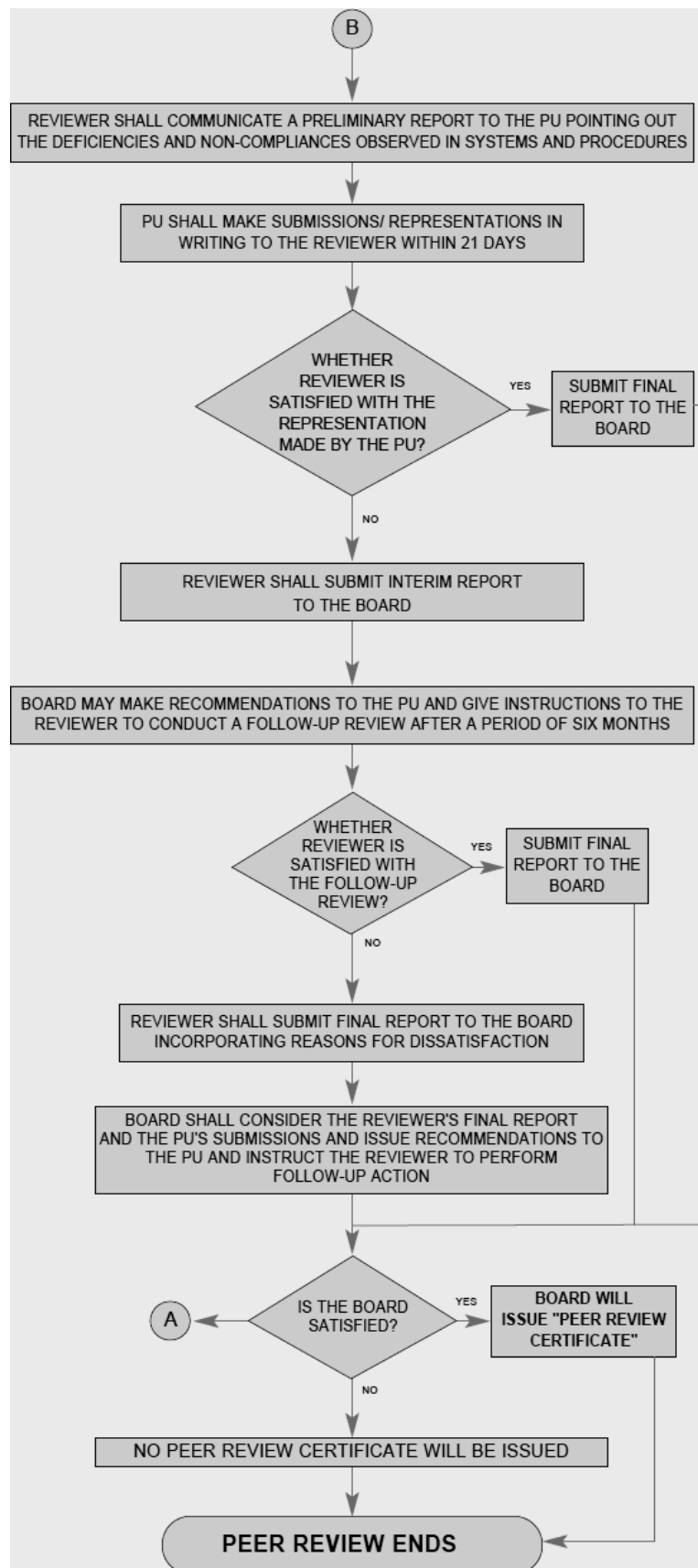
- (a) Whenever a peer review is mandated
- (b) Whenever a peer review is requested
- (c) Whenever a peer review is conducted.

A Peer Review is said to be mandated when the Council of the Institute or any legislative amendment to law requires a Peer Review to be conducted. A Peer Review is said to be requested when a Practice Unit (PU) requests the Peer Review Board to have itself Peer Reviewed on a voluntary basis. A Peer Review is said to be conducted when a Peer Review is undertaken based on random selection initiated by the Peer Review Board

Peer Review Process

FLOW CHART EXPLAINING THE PEER REVIEW PROCESS





Empanelment of Peer Reviewers

1. The Peer Review Board has been empowered to maintain a panel of Reviewers. Para 10 of the peer review Guidelines provides for the qualifications of the reviewer. It states, "The nature and complexity of peer review require the exercise of professional judgment. Accordingly, an individual serving as a reviewer shall:- (a) Be a member; (b) Possess at least ten years' experience; and (c) Be currently a Company Secretary in Practice.
2. The requirement of at least ten years' experience as a member does not necessarily entail his/her experience as a Practicing Company Secretary. Even a member who has earlier been in employment for a decade can seek empanelment as a Reviewer provided he/she is holding a certificate of practice on the date of making the application for empanelment as reviewer.
3. The Board has prescribed a format for inviting applications from members fulfilling the above criteria who are willing to be empanelled as Reviewers. The application form seeks to collate information on the experience of the member, infrastructure available, professional experience, educational qualifications, practice areas, etc. which would enable the Board to assess the core competence of the applicant for empanelment as reviewer. When a Peer Review is required to be conducted, the Board would endeavour to match the relevant experience and standing of the Reviewer with the profile of the P.U. which is to be Peer Reviewed.
4. A copy of the application format for empanelment of Reviewer is may be downloaded from the webpage of the Peer Review Board at the ICSI portal www.icsi.edu.

Statement of Confidentiality

The process of Peer Review requires high level of integrity on the part of the Peer Reviewer and any Authorised Assistant who may assist him during the Review. The Board has prescribed a Statement of Confidentiality for this purpose,. Before accepting to undertake a Peer Review, the Reviewer and any other Authorised Assistant who may assist him in the Peer Review, are required to sign this Statement of Confidentiality and shall send the same to the Peer Review Board. This statement of Confidentiality should be renewed every year.

METHODOLOGY TO BE FOLLOWED BY REVIEWER

(a) Offsite review

- This contemplates studying the information given by the PU in the Questionnaire and based on the same make his own observations about possible areas where improvement is possible and to note other aspects to be discussed in personal meeting with PU.

(b) Onsite review

- Verification of information given by the PU.
- Test checks in respect of attestation assignments handled by the PU.
- Interaction with the staff & trainees of PU should be a part of the peer review.
- Calling for the records in respect of the client maintained by the PU to verify whether proper systems and procedures have been followed.

Compliance with Peer Review Guidelines

Practice units are required to comply with the provisions of the Peer Review guidelines. Practice units failing in this regard will be required to undergo appropriate review of their quality controls by the Board in terms of such specific directions as may be given to it by the Council in this regard from time to time and as intimated to the members.

Cost of Peer Review

The cost of Peer Review for the reviewer and his qualified assistant(s) is decided by the Board from time to time, shall be borne by the Practice unit. In case reviewer has to conduct a second review, the same rate would apply to the second review also. Each of the branch/ office under review would be considered as a separate unit for the purpose of payment of cost of Peer Review.

If a company/concern requests the Board for the conduct of peer review of its secretarial auditor (practice unit), the Board shall take due cognizance of such request and in that case the cost of the peer review shall be borne by such company/ concern.

If the Council / Government or any regulatory body requests the Board for conduct of peer review of any Practice Units, the Board shall take due cognizance of such request and in that case the cost of peer review shall be borne by the referred practice unit.

Obligations of the Practice Unit

The Practice Unit under review shall provide access to any record or document as may be asked for by the reviewer. For these purposes:

Any person who is reasonably believed by a reviewer to have in his possession or under his control any record or other document, which contains or is likely to contain information relevant to the peer review shall:

(1)(a) Produce to the reviewer or afford him access to, any record or document specified by the reviewer or any other record or document which is of a class or description so specified, and which is in his possession or under his control/ being in either case a record or other document which the reviewer reasonably believes is or may be relevant to the peer review, within such time as the reviewer may reasonably require;

(b) If so required by the reviewer, afford and provide to him such explanation or further particulars in respect of anything produced in compliance with a requirement under (1) above, as the reviewer shall specify; and

(c) Provide to the reviewer all assistance in connection with peer review which he is expected to provide.

(2) Where any information or matter relevant to a practice unit is recorded otherwise than in a legible form, the practice unit shall provide and present to the reviewer a reproduction of any such information or matter, or of the relevant part in a legible form, with a suitable translation in English if the matter is in any other language, and such translation is requested for by the reviewer.

(3) The practice unit shall ensure that the reviewer is given access to all documents relevant to his review no matter which office of the practice unit these documents may be available in, in case the practice unit has more than one office.

(4) A practice unit shall allow the reviewer to inspect, examine or take any abstract of or extract from a record or document or copy therefrom which may be required by the reviewer.

Periodicity of Peer Review

The peer review of every practice unit should be mandatorily carried out at least once in a block of five years. However, if the Board so decides or otherwise at the request of the practice unit, the peer review for such a practice unit can be conducted at shorter intervals.

Review Framework

Essentially, a peer review entails a review of attestation engagement records and related financial/other statements to ascertain whether the practice unit is adhering to technical standards. Where a practice unit is not following technical standards in certain situations, suggestions and recommendations for improvement may be made, and possibly followed by a further review, in keeping with the primary thrust of peer review.

Reporting

The central element of a peer review is the assessment i.e. the professional judgment by the peers. The Guidelines for Peer Review contains provisions for the report of Peer Reviewer. It has been provided that at the end of an on-site review, the reviewer shall, before making his report to the Board, communicate a preliminary report to the practice unit. The reviewer shall report on the areas where systems and procedures had been found to be deficient or where he has noticed non-compliance with reference to any other matter. In arriving at this conclusion, the Reviewer shall be expected to examine the materiality of the non-compliance or deficiency, the number of occasions when such non-compliance was noticed and its overall impact on the quality of attestation service rendered by the PU.

QUESTIONNAIRE FOR PRACTICE UNITS

The Peer Review process requires each Practice Unit to provide some basic information about the PU to the Reviewer as contemplated in the Guidelines in the questionnaire specifically designed by the Board for the purpose.

The questionnaire with the answers provided, would enable the reviewer to make a fair assessment as to the Key Control Areas prevalent in the PU and the degree of reliance that can be placed on the internal control mechanism and records maintained by the PU.

Most of the questions are of objective type which can be answered in simple YES or NO. Some of the questions may require a little explanation from the PU. In case any question is not relevant to a particular PU, it may be replied by writing "Not Applicable" as the answer, with reasons for the same.

The questionnaire is expected to act as guidance to the PUs as to the basic internal control measures that each Practice Unit should normally undertake. Non-existence of any of the internal control measures as elucidated in the questionnaire does not necessarily mean that the PU has failed in any aspect related to quality of service. Still it is desirable that the PU has in place all the internal control mechanisms contained in the questionnaire as a measure of good practice.

All the responses to the questionnaire would be kept strictly confidential by the reviewer and his team and no information contained therein would be shared with any third party.

The reviewer places a great deal of reliance on the responses provided by the PU in the questionnaire while designing his / her review plan. Care should therefore be taken by the PU while answering the questions. For the ready reference of readers, a copy of the questionnaire is placed as Appendix IV of this Manual

REVIEW PROCESS

The methodological approach involved in peer review can be described in terms of four stages viz., preparation, planning, execution and reporting, which are summarized below:

(i) Preparation

A practice unit will be notified in writing about an impending peer review and will be sent a Questionnaire for completion, the PU is required to send the duly filled in Questionnaire to the Board.

Return of completed Questionnaire - The practice unit shall have to complete and return the Questionnaire within 15 days of the notification. The information will be used for the planning of the review. In addition, practice units will be required to enclose a complete list of their attestation services clients for the year in respect of which the review is being done.

The Board will send a panel of three suggested names of reviewers, along with their brief profiles. The practice unit will have to give its choice of reviewer within a period of 15 days from the day of receipt of the panel sent by

the Board. In case the practice unit would like to have reviewers from another State/ Region (and undertakes to bear the extra costs that would be incurred for TA/DA etc.) and none of the reviewers as identified by the Board for the practice unit are from outside the place of business of the practice unit, then the practice unit may make a special request to the Board to provide names of reviewers from outside the State/Region where the practice unit has its/his place of business. The Board will send an assignment letter to the selected reviewer for his/her consent.

(ii) Planning

On acceptance of the peer review by the selected reviewer, the PU will be notified.

The reviewer may also require the PU to provide any other information the reviewer considers necessary to facilitate the selection of a sample of attestation services engagements, representative of the practice unit's client portfolio, for review.

- Sample of Attestation services Engagements
 - (a) From the complete attestation services client list, an initial sample will be selected by the reviewer. Practice units will be notified of the selection in writing about two weeks in advance, requesting the relevant records of the selected attestation services clients to be made available for review.
 - (b) At the execution stage, the initial sample may be reduced to a smaller actual sample for review. However, if the reviewer considers that the actual sample does not cover a fair cross-section of the practice unit's attestation services engagements, he may make further selections.

- Confirmation of visit

In consultation with the practice unit, date(s) will be set for the on-site review to be carried out. Flexibility will be permitted to ensure that practice units are not inconvenienced at especially busy periods. The on-site review date(s) will be arranged by mutual consent such that the review is concluded within sixty days of notification.

(iii) Execution

(i) On site review

Peer review visits will be conducted at the practice unit's head office or other officially noted/ recorded place of office. The complete on-site review of a practice unit may take one or two full days depending upon the size of the practice unit and scope of the peer review. This is based on the assumption that the practice unit concerned has made all the necessary information and documentation available to the reviewer for his review. However, in any case this on-site review should not extend beyond three working days.

(ii) Initial meeting

An initial meeting will be held between the reviewer and the sole proprietor/ a partner of the practice unit designated to deal with the review (designated partner). The primary purpose of this meeting is to discuss the agenda of the peer visit and confirm the accuracy of the responses given in the Questionnaire. The description of the system in the Questionnaire may not fully explain all the relevant procedures and policies adopted by the practice unit and this initial meeting can provide additional information. The reviewer should have a full understanding of the system and be able to form a preliminary evaluation of its adequacy at the conclusion of the meeting. During the meeting, a decision can also be taken on the evaluation method and the person(s) in the office of the PU to be interviewed and who will be able to assist the Reviewer in completing the Peer Review Process during his/her visit.

(iii) Compliance Review-General Controls

- (a) The reviewer may carry out a compliance review of the General Controls and evaluate the degree of reliance to be placed upon them. The degree of reliance will, ultimately, affect the attestation services engagements to be reviewed. The following five key controls will be considered as General Controls:

- Independence
- Maintenance of Professional Skills and standards
- Outside Consultation
- Staff Supervision and Development
- Office Administration

Practice units are expected to address each of the five key control areas.

- (b) In each key control area there shall be supplementary questions and matters to consider. These are intended to ensure that the controls that are expected to be maintained, are installed and operated within practice units.
- (c) All questions in the questionnaire may not necessarily be relevant to particular types of practice units because of its size, nature and type of its practice. However, practice units should still assess their internal control systems to ascertain whether they address the objectives under the five key control areas.
- (d) The Reviewer should evaluate these general controls to understand the functioning of the office of the Practice Unit.

(iv) Selection of attestation services engagements to be reviewed

- (a) The number of attestation services engagements to be reviewed depends upon:
- The number of practicing members involved in attestation services engagements in the practice unit;
 - The degree of reliance placed, if any, on general quality controls; and
 - The total number of attestation services engagements undertaken by the practice units for the period under review.
- (b) The engagements reviewed should be a balanced sample from a variety of different types of companies. Accordingly, if the reviewer considers that the actual sample is not representative of the practice unit's attestation services client portfolio, he may make further selections from the initial sample or from the complete attestation services client list.
- (c) The Reviewer should not undertake Peer Review of attestation engagements which have been the subject matter of disciplinary proceedings nor should the Practice Unit influence the Reviewer to select such engagements for Peer Review.

(v) Review of records

The reviewer may adopt a compliance approach or substantive approach or a combination of both in the review of attestation services engagement records.

- (a) Compliance approach - Attestation services engagements
- The compliance approach is to assess whether proper control procedures have been established

by the practice unit to ensure that attestation services are being performed in accordance with Technical Standards.

- Practice units should have procedures and documentation sufficient to cover each of the key areas. If Members in smaller practices find some of the documentation too elaborate for their clients and they tailor their attestation services documentation to suit their particular circumstances with justification for doing so should be provided to the reviewer.
- If the size of the Practice Unit is small or medium (a matter left to the judgement of the Reviewer), the Compliance Approach may not be appropriate. In such a case, the Reviewer may choose the Substantive Approach for conduct of Review.

(b) Substantive approach - Attestation services Engagements

A substantive approach will be employed if the reviewer chooses not to place reliance on the practice unit's general controls on attestation engagements or is of the opinion that the standard of compliance is not satisfactory or not appropriate in the case of a specific Practice Unit selected for Peer Review. This approach requires a review of the attestation working papers in order to establish whether the attestation work has been carried out as per norms of Technical Standards. The reference material related to Technical Standards is provided as Appendix V of this Manual.

REPORTING

The Peer review Guidelines contains following provisions for reports of Peer Reviewer.

(i) Preliminary Report of Reviewer

It has been provided that at the end of an on-site review, the Reviewer shall, before making his report to the Board, communicate a Preliminary Report to the practice unit. The reviewer shall report on the areas where systems and procedures had been found to be insufficient or deficient or where any non-compliance has come to his notice with reference to any matter. The reviewer shall not name any individual in his reports. The Reviewer need not communicate any Preliminary Report if he has not noticed any instance of non-compliance or deficiency during the Peer Review. In such a case, the Reviewer shall submit a Final Report to the Board. All Reports shall be prepared on the letterhead of the Reviewer, signed by him and should contain his Membership Number/C.P. No. and the Reviewer's Code Number allotted by the Board.

Response to the Preliminary Report

- The practice unit shall, within 21 days beginning the day after the day the Preliminary Report is received by the practice unit from the Reviewer, make any submissions or representations, in writing concerning the Preliminary Report to the Reviewer,

(ii) Interim Report of Reviewer

- (a) In case the reviewer is not satisfied with the reply of the practice unit, the reviewer shall submit his Interim Report to the Board.
- (b) On receiving such a report from a reviewer in terms of these Guidelines, the Board, having regard to the Report and any submissions or representations attached to it, may make recommendations to the practice unit concerned regarding the application by it of Technical Standards

if it is of the opinion that

- In case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, the Technical Standards;

- In case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, the Technical Standards;

Issue instructions to the reviewer to carry out, within such period as may be specified in the instructions (which period shall not commence earlier than six months after the date on which the instruction is issued), a further peer review as regards the practice unit to which the report relates; and

- Specify in the instruction, the matters in respect of which the review is to be carried out;

(c) The Board will make recommendations to the practice unit where:

- Based on the report of the reviewer, it appears that the practice unit has satisfied all key control objectives, which the Board has determined and/or prescribed in respect of maintenance of/adherence to Technical Standards but where further improvements could be made to internal quality control systems; and
- Based on the report of the reviewer, it appears that the practice unit has satisfied the major key control objectives but some weaknesses exist in others. The practice unit is expected to consider the recommendations for rectifying the weaknesses thus identified and informed by the Board and take all necessary actions to ensure that all key control areas are addressed.

In pursuance of the provisions contained in the above clause or on receipt of a request from the practice unit, the board may instruct the reviewer to again carry out the review after six months to verify that systems and procedures have been streamlined and /or modified as instructed by the board and accordingly, on satisfying himself that the practice unit has steam lined or modified its systems and procedures as instructed by the board, the peer reviewer shall submit a final report to the board.

- (d) A follow up review will be required where the practice unit has not satisfied the board that all the key control objectives have been maintained and where, in the view of the board the deficiencies are likely to materially affect the overall quality of an attestation services engagement of the practice unit. In such cases the board will also make recommendations, which it expects the practice unit to implement in order to ensure the maintenance of technical standards. The implementation of these recommendations will be examined during the follow up review, which may be ordered by the board.
- (e) In case the reviewer is not satisfied even at the subsequent review, he shall submit his final report to the board incorporating his reasons for dissatisfaction.

(iii) Final Report of Reviewer

- (a) The reviewer will prepare the final report to the board (the reviewer's report), incorporating the findings as discussed with the practice unit. The final report will be examined/inspected by the board in terms of the degree of compliance with the technical standards by the reviewed practice unit. The model forms of such final reports shall be communicated to the reviewer by the board.
- (b) The board shall consider the reviewer's final report and the practice unit's submissions. Thereafter, the board may issue recommendations, if considered appropriate, to the practice unit and/or instruct the reviewer to perform any follow-up action. The board may, if deemed fit, issue peer review certificate to the practice unit.

(iv) The reviewer shall not communicate any report(s) unless the examination of such Report(s) and related records has been made by him or by a qualified assistant of his firm?

OFFICE SYSTEMS AND PROCEDURES

Under the guidelines for peer review of attestation services by practising company secretaries, the peer review

is expected to examine the office systems and procedures with regard to compliance of attestation services.

The reviewer shall verify whether the practice unit has adequate office systems and procedures in place. However, the extent and scale of these systems may vary from one practice unit to another, depending upon the size and scale of practice of the practice unit.

The reviewer shall particularly examine the following aspects, besides forming his own judgment during the review:

1. Whether the practice unit has a document management system which should ideally include the filing system, record storage and retrieval system (whether in hard copy or soft copy),
2. Whether allocation of attestation assignments among the trainees are commensurate with the capability of the staff, whether the assignments are properly carried out and the attestation services are verified by the proprietor or partner of the practice unit or a qualified assistant in the office of the practice unit before authentication.

Training programs for staff (including apprentices) concerned with attestation functions, including appropriate infrastructure.

Proper training and capacity development of the apprentice trainee(s) and other staff in the office of the practice unit is very essential to maintain the quality of attestation services. As it may become difficult for the practice unit to attend to every attestation service, most practice units generally rely on the trainees for execution of the attestation services. In this context, the peer reviewer may examine whether:

1. The apprentice trainees are maintaining a training diary to record the work done every day and whether the diary is being examined by the proprietor/partner/qualified assistant of the practice unit periodically.
2. Whether any staff induction process is in place.
3. Whether the staff are periodically encouraged to attend any training program or any other capacity building programme, including any in-house mechanism for their professional development.
4. Whether the office of the practice unit is equipped with a library or reference material relating to professional services.
5. Whether the overall décor/appearance of the office of the practice unit is satisfactory.

The list furnished above is only illustrative. The peer reviewer may like to examine any other matters also. However, in doing so, the peer reviewer shall keep in mind the size of the practice unit and its scale of operations.

QUALITY REVIEW BOARD

Quality Review Board (QRB) has been constituted by Government of India in exercise of the powers conferred by Section 29 A of the Company Secretaries Act, 1980 (56 of 1980) read with rules 8, 9 and 10 of the Company Secretaries Procedures of Meetings of Quality Review Board, and Terms and Conditions of Service and Allowances of the Chairperson and Members of the Board Rules, 2006.

The Board has been set up to review and enhance the quality of the services rendered by the members of the ICSI. The Board aims to standardize the practices followed by the Company Secretaries and enhance the quality of the services rendered by the members of ICSI on continuous basis.

The Company Secretaries Act, 1980 provides for the regulation of the profession of Company Secretaries in India. The Act was amended in the year 2006 and sections 29A to 29D were inserted making provision for the establishment of Quality Review Board. Accordingly, the Government of India, Ministry of Corporate Affairs, vide their notification no. S.O. 68 (E) dated 6th February, 2012 constituted QRB of the Institute of Company Secretaries of India for promoting “Quality” considerations in rendering various professional (both statutory

and non-statutory) services by the Members of the Institute. Government of India, Ministry of Corporate Affairs, vide their notification no. G.S.R. 736(E) dated 27th November, 2006 also notified the Company Secretaries Procedures of Meeting of Quality Review Board, and Terms and Conditions of Service and Allowance of Chairpersons and Members of the Board, Rules, 2006. The relevant legislations are given below:

THE COMPANY SECRETARIES (AMENDMENT) ACT, 2006

Section 29A. Establishment of Quality Review Board

1. The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and four other members.
2. The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.
3. Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.

Section 29B. Functions of Board

The Board shall perform the following functions, namely:—

1. to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;
2. to review the quality of services provided by the members of the Institute including secretarial Audit services; and
3. to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

Section 29C. Procedure of Board

The Board shall meet at such time and place and follow in its meetings such procedure as may be specified.

Section 29D. Terms and conditions of service of Chairperson and members of Board and its expenditure

1. The terms and conditions of service of the Chairperson and the members of the Board, and their allowances shall be such as may be specified.
2. The expenditure of the Board shall be borne by the Council.

GUIDANCE MANUAL ON QUALITY OF AUDIT AND ATTESTATION SERVICE

Objective of Guidance Manual

The objective of the Manual is

1. To guide the Company Secretaries to establish policies, procedures & systems to maintain the highest standards of quality in the assignments undertaken by them
2. To establish and maintain a system of quality control to provide it with reasonable assurance that
 - (a) the firm and its personnel comply with the technical/professional standards and applicable legal and regulatory requirements; and
 - (b) the reports or certificates issued by the firm or engagement partners are appropriate in the circumstances.

The Guidance Manual on Quality of Audit and Attestation Services by Company Secretaries also deals with a

firm's responsibilities for its system of quality control for audits and reviews and other assurance and related services engagements.

Quality Management System

It is important to understand the meanings of Quality Assurance (QA) and Quality Control (QC) as both terms are the integral part of the quality management systems. For an effective operation, it is important to rely on the differences between these terms.

An Effective Quality Management Systems (QMS) contribute enormously to the success of a Practising Unit, whereas when it is poorly understood, the QMS are likely to be weak and ineffective in ensuring the timely delivery and in competent in satisfying the customer's requirements.

Quality Assurance includes Guideline for Practice and Prevention

Quality Assurance is focused on planning, documenting and agreeing on a set of guidelines that are necessary to assure quality which are issued by the various regulators on time to time. One of the example for quality assurance is instruction kit of various e-forms, whereas the purpose of the Instruction kit is to provide guidance on the requirement of the form and to have correct record in place.

Normally the QA guideline provides DO's and Don'ts, Instructions, verification methodology, possible errors and defect along with the remedial action required for the same.

The purpose of QA is to prevent defects from entering into system and In other words, QA is a pro-active management practice that is used to assure a stated level of quality in place.

The quality assurance could also be considered as a tool of risk mitigation However the effective communication between the Company, its directors KMP's, officers is very important to take informed decision and to take support and guidance from experts before taking and corporate Action, which may cause a risk to the company, its directors KMP;s Officers and Other stakeholders.

Quality Control includes Strategy of Detection and Improvement

Quality Control can be referred as the examination of Output, Review of the work and assignment already taken place, on the various parameter like time involved, number of resubmission, deficiency, cost, manpower, expertise engaged etc. QC involves verification of output conformance to desired quality levels. This means to checked delivery against customer requirement.

ICSI GUIDANCE MANUAL ON QUALITY MANAGEMENT SYSTEMS

Quality Control Elements within the Firm

Leadership Responsibilities

1. The firm should assign responsibility for each assignment to one of its partners or the team leader who shall be responsible for overall quality of such assignment.
2. The proprietor of the entity/partners of the firm shall be responsible for quality maintenance and quality improvement of which recommended features are:
 - a) Communication of the quality control policies and procedures to all team members / relevant personnel. The methods for communication, scope and frequency thereof should be established.
 - b) Establishing a process that encourages personnel to communicate their views or concerns on quality control matters.
 - c) Clearly establishing responsibilities of the proprietor of the entity / partners of the firm and other

senior personnel for quality control.

- d) Promotion of an internal culture of quality and provision of related practical guidance including coverage in professional development programs.
 - e) Demonstration of firm's overriding commitment to quality, above commercial considerations through the firm's policies and procedures.
 - f) Addressing performance evaluation, compensation and promotion; and devotion of sufficient resources for the development, documentation and support of quality control policies and procedures.
 - g) Ensuring possession of appropriate qualifications, experience, ability and authority of those to whom responsibilities for quality control and performance are assigned.
3. In order to ensure and achieve above quality parameters, it is necessary to set a procedure for documentation, which will cover the following areas—
- (a) Documenting quality control policies and procedures of the firm and its circulation to all relevant personnel.
 - (b) Documenting & circulating policies & procedures whereby individual employees/personnel can communicate their views or concerns on quality control matters.
 - (c) Documenting responsibilities of the Partner and other senior personnel for quality control and circulation among concerned personnel and Governing Board of the firm.
 - (d) Documenting and circulating relevant practical guidance (including coverage in professional development programs) for quality control.
 - (e) Documenting the firm's requirement of appropriate qualifications, experience, ability and authority of those to whom responsibilities for quality controls and performance are assigned.
- 4 The firm shall keep and preserve the above documents for prescribed period (unless prescribed by any statute, rules or authority, the firm shall decide and document the period of preservation which should not be less than three years). However, putting those policy documents in public domain is optional.

Ethical Requirements

- 5. The firm, its partner or the team leader responsible for the assignment should ensure whether members of the audit team have complied with relevant ethical requirements.
- 6. It is recommended that ethical requirements may be fulfilled by the following:
 - (a) Methods and processes for establishing, promoting, and monitoring ethical conduct among all personnel.
 - (b) Policies and procedures to identify non-compliance with ethical requirements and to document both the issues identified and how they were resolved.
- 7. Ethical requirements include:
 - (a) independence;
 - (b) Integrity;
 - (c) Objectivity;
 - (d) Professional competence and due care;
 - (e) Confidentiality;

- (f) Professional conduct; and
 - (g) Technical standards
8. The firm, its partner or the team leader responsible for the assignment should assess the independence requirements which apply an assignment. In this regard, the independence policy issues are:
- (a) Policies and procedures should be in place to provide reasonable assurance that the firm, its personnel and, where applicable, others subject to independence requirements, maintain independence where required to do so.
 - (b) Communication to, and education of, partners and professional staff, including non-audit personnel, to ensure that they understand the independence policies that relate to their activities.
 - (c) Policies and procedures to identify and evaluate circumstances and relationships that create threats to independence so that appropriate action may be taken to eliminate or reduce the threat to an acceptable level by applying safeguards or, if considered appropriate, by withdrawing from the engagement.
 - (d) Policies and procedures required to ensure compliance with the auditor's independence requirements of the relevant laws & rules.
 - (e) Requirements for engagement partners to provide the firm with relevant information about client engagements, including the scope of services, to enable it to evaluate the overall impact, if any, on independence requirements of accepting or continuing with an engagement.
 - (f) Requirements for the engagement partner to obtain information, consider breaches if any of the firm's independence policies, take appropriate action and document conclusions on compliance with independence requirements that apply to the audit engagement.
 - (g) Requirements for personnel to promptly notify the firm of circumstances and relationships that creates a threat to independence so that appropriate action may be taken.
 - (h) Maintenance of adequate records to identify, communicate, and monitor compliance with, specific independence requirements (e.g., prohibited investment lists) so that appropriate action can be taken regarding identified threats to independence.
 - (i) Policies and procedures to provide the firm with reasonable assurance that it is notified of breaches of independence requirements so that it may take appropriate action to resolve such situations.
 - (j) Periodic written (or electronic) confirmation (at least annually) of compliance with firm policies on independence by all personnel required to be independent.
 - (k) Processes in place to evaluate the appropriateness of undertaking non- assurance services for audit clients.
 - (l) Policies and procedures to reduce the familiarity threat including rotation of individuals with a significant role in a listed company audit engagement and limitations on employment of former partners, directors or lead auditors by audit clients or their related companies.
 - (m) Policies concerning fees and pricing (including fees that constitute a significant proportion of the firm's fees, overdue fees and pricing in proposals).
 - (n) Disciplinary procedures regarding non-compliance with independence policies and procedures.
 - (o) Policies when there is actual or threatened litigation between the firm and an auditee.
 - (p) Policies and practices when independence is determined to be impaired including reporting to any regulatory authority where required.

- (q) Policies and procedures regarding communication with the audit committee of an auditee including provision of information to the client company allowing adequate disclosure of non-audit services in the director's report or any other document for disclosure.

Familiarity Threat

- 9. A familiarity threat arises when, by virtue of a close or long-term relationship with a client, its directors, officers or employees, the firm or person on an engagement team may become too sympathetic to the client's interests compromising the independence of the auditor/firm.
- 10. Rotation requirement - deploying the same principal auditor on an audit or assignments from the firm over a prolonged period of time may create a familiarity threat. This threat is particularly relevant in the context of the audit/assignments of listed entities and safeguards should be applied in such circumstances to reduce such threat to an acceptable level.

Integrity

- 11. While carrying out the assignments, firm should ascertain the integrity aspects of the client. This is particularly applicable in case of new clients though such periodical assessment may also be carried in case of existing clients.
- 12. Integrity is associated with soundness or moral principles and character in dealings with others. For assessing and evaluating the integrity the following aspects of the client may be considered:
 - (a) The identity, business reputation and attitude of the owners and key management personnel and related parties.
 - (b) The nature of the client's operations, including its business practices.
 - (c) Attitude of the management towards compliance of various statutory requirements including implementation of Secretarial Standards, the internal control systems, internal audit etc.
 - (d) Limitations suggested / imposed on the scope of work.
 - (e) The reasons for the proposed appointment of the firm and non reappointment of the previous firm.

Objectivity

- 13. The test of objectivity shall be whether the audit was carried out in an impartial and fair manner without favor or prejudice. The auditor should base his assessment and opinion purely on facts, evidences, sound analysis and judgement.

Professional Competence and Due Care

- 14. Firm should take due care in reporting and authenticating documents and statements applying his professional skills and maintaining objectivity and integrity. While exercising due care and reflecting professional competence, firm should possess:
 - (a) An understanding of Secretarial Standards applicable to fulfill the responsibilities;
 - (b) special skills (for example, industry specific knowledge) necessary to perform the work on the non- financial information of the particular component; and
 - (c) an understanding of the applicable cost/financial reporting framework that is sufficient to fulfill the responsibilities.

Confidentiality

- 15. Confidentiality is the spirit of company secretarial profession and as a professional, complete confidentiality of information obtained during assignment is the basic requirement.

16. Relevant ethical requirements establish an obligation for the firm's personnel to observe at all times the confidentiality of information contained in engagement documentation, unless specific client authority has been given to disclose information, or there is a legal or professional duty to do so.

Professional Conduct

17. Company Secretaries are looked upon as trustworthy guardians caring for consumer protection, investor protection, guides to corporate world in secretarial leadership. As corollary their professional conduct must also be illustrative and aboveboard.
18. The members of the Institute of Company Secretaries of India are bound by a code of conduct. This code stipulates and binds Company Secretaries to the highest level of care, duty and responsibility to their employers and clients, the public and their fellow professionals.

Technical Standards

19. The firm should be fully conversant with various pronouncements by the regulatory bodies and should keep updated with the technical standards which may be prescribed from time to time.

Human Resources: Requirements, Training & Development

20. In case of a professional firm, human resources are the prime assets responsible for success or failure of the firm. The constitution of the team and members which make the team is the major determinant in rendering the quality of professional services and hence, this element is dealt with in a separate chapter.

Performance Evaluation

21. Performance Evaluation is necessary for developing and maintaining competence and commitment to ethical principles which include;
 - (a) Making personnel aware of the Firm's expectations regarding performance;
 - (b) Providing personnel with evaluation of performance;
 - (c) Helping personnel understand that advancement to provisions of greater responsibility depends, among other things, upon performance quality; and
 - (d) Explaining personnel in clear terms that the failure to comply with the firm's policies and procedures may result in disciplinary action.
22. In order to evaluate the performance, maintenance of the documents, containing following aspects is recommended:
 - (a) Overall quality on each assignment and the responsibility of the engagement partner.
 - (b) Engagement quality and consistency through use of Manuals and/or software tools or other forms of standardized documentation and industry or subject matter-specific guidance.
 - (c) Supervision, quality control and documentation of work during the engagement.
 - (d) Review by more experienced personnel, including the engagement partner, of work performed by less experienced team members prior to issuing the report.
 - (e) Policies and procedures for the assembly of final engagement files on a timely basis after the engagement reports have been finalised.

Monitoring

23. Monitoring refers to a process which is an ongoing exercise for evaluation of firm's quality control systems which also includes periodic inspection of completed assignments on sample basis to provide the firm with reasonable assurance that its quality control systems are operating effectively.

24. A firm has to monitor its personnel, performance procedures, system for reporting and so on as an ongoing exercise. Certain areas for monitoring operations are identified as under–

Monitoring issues for Professional Development

- (a) Monitor continuing professional education programs and maintain appropriate records, both on a firm and on an individual basis.
- (b) Review periodically the records of participation by personnel to determine compliance with firm's requirements.
- (c) Review periodically evaluation reports and other records prepared for continuing education programs to evaluate whether the programs are being presented effectively and are accomplishing firm's objectives.
- (d) Consider the need for new programs and for revision or elimination of ineffective programs.

Monitoring of Employees and Performance Procedures

- (a) Define the scope and content of the firm's monitoring program.
 - (b) Determine the monitoring procedures necessary to provide reasonable assurance that the firm's other quality control policies and procedures are operating effectively.
 - (c) Determine objectives and prepare instructions and review programs for use in conducting monitoring activities.
 - (d) Provide guidelines for the extent of work and criteria for selection of engagements for review.
 - (e) Establish the frequency and timing of monitoring activities.
 - (f) Establish procedures to resolve disagreements which may arise between reviewers and engagement or management personnel.
25. Establish levels of competence etc. for personnel to participate in monitoring activities and the method of their selection. The relevant issues:
- (a) Determine criteria for selecting monitoring personnel, including levels of responsibility in the firm and requirements for specialised knowledge.
 - (b) Assign responsibility for selecting monitoring personnel.
 - (c) Conduct monitoring activities.
 - (d) Review and test compliance with the firm's general quality control policies and procedures.
 - (e) Review selected engagements for compliance with professional standards and with the firm's quality control policies and procedures.

Reporting & Corrective Measures

26. Provide for reporting the firm's findings to the appropriate management levels, for monitoring actions taken or planned, and for overall review of the firm's quality control system. The steps are:
- (a) Discuss general findings with appropriate management personnel.
 - (b) Discuss findings on selected engagements with engagement management personnel.
 - (c) Report both, general and selected engagement findings and recommendations to firm's Management together with corrective actions taken or planned.
 - (d) Determine that planned corrective actions were taken.

- (e) Determine need for modification of quality control policies and procedures in view of results of monitoring activities and other relevant matters.

Quality with respect to Customer & Customer Relationship Acceptance & continuation of client relationship and specific assignments

27. A firm shall establish policies and procedures for the acceptance and continuance of client relationships and specific engagements which will provide reasonable assurance to the firm that it will undertake or continue relationship with client only when it satisfies the following tests
 - (a) The firm has competence, capability, time & resources to carry out the assignment.
 - (b) The firm complies with the relevant ethical requirements.
 - (c) The firm has considered the integrity of the client and ensured the same at an acceptable level.
28. The firm should establish procedures for evaluation of prospective clients and for their approval as clients. Evaluation procedures could include the following:
 - (a) Obtain and review available secretarial records annual reports, annual return, minutes book and ROC returns, regarding prospective client.
 - (b) Enquire from third parties as to any information regarding the prospective client and its management and principals which may have a bearing on evaluating the prospective client. Enquiries may be directed to the prospective client's bankers, legal advisers, investment bankers, and the financial or business community who may have such knowledge.
 - (c) Communicate with the outgoing Company Secretary. Request in writing if there are any unusual circumstances surrounding the proposed change which the firm should be aware of, so that it may determine whether it should accept nomination.
 - (d) Consider circumstances which would cause the firm to regard the engagement as one requiring special attention or presenting unusual risks.
 - (e) Evaluate the firm's independence and ability to serve the prospective client. In evaluating the firm's ability, consider needs for technical skills, knowledge of the industry and personnel.
 - (f) Determine that acceptance of the client would not violate the Code of Professional Ethics applicable to the firm, its partners and staff.

Evaluating Client Information

29. Designate an individual or group, at appropriate management levels, to evaluate the information obtained regarding the prospective client and to make the acceptance decision.
30. Evaluate clients upon the occurrence of specified events to determine whether the relationships ought to be continued. Events specified for this purpose could include:
 - (a) the expiration of a time period;
 - (b) a major change in one or more of the following
 - (i) Management
 - (ii) Directors
 - (iii) Ownership
 - (iv) Legal Advisers
 - (v) Financial condition

- (vi) Litigation status
- (vii) Scope of the engagement
- (viii) Nature of the client's business; and
- (c) the existence of conditions which would have caused the firm to reject a client had such conditions existed at the time of the initial acceptance.

Preconditions of accepting/continuing any professional engagement

31. Prior to acceptance of any engagement, the firm, in order to establish whether the preconditions for a professional assignment are present, shall:
 - (a) Determine whether the reporting framework to be applied in the preparation, audit, review of the secretarial/ non-financial statements is acceptable; and
 - (b) Obtain the agreement of management that it acknowledges and understands its responsibility:
 - (i) For the preparation of the secretarial/ non-financial statements in accordance with the applicable reporting framework, including where relevant their fair presentation;
 - (ii) For such internal control/systems/procedure as management determines is necessary to enable the preparation of secretarial/ non- financial statements that are free from material misstatement, whether due to fraud or error; and
 - (iii) To provide the firm with:
 - a. Access to all information of which management is aware that is relevant to the preparation/audit/review etc. of the secretarial/ non- financial statements such as records, documentation and other matters;
 - b. Additional information that the firm may request from management for the relevant purpose; and
 - c. Unrestricted access to persons within the entity from whom the auditor determines it necessary to obtain audit evidence.

Limitation on Scope Prior to Engagement Acceptance

32. If management or those charged with governance impose a limitation on the scope of the auditor's work in the terms of a proposed audit engagement such that the auditor believes the limitation will result in the auditor disclaiming an opinion on the Secretarial/non-financial statements, the auditor shall not accept such a limited engagement as an audit engagement, unless required by law or regulation to do so.

Other factors affecting Engagement Acceptance

33. If the preconditions for an audit/professional assignment are not present, the auditor shall discuss the matter with management. Unless required by law or regulation to do so, the auditor shall not accept the proposed audit engagement:
 - (a) If the auditor assesses that the reporting framework to be applied in the preparation of the secretarial/non-financial statements is unacceptable, or
 - (b) If the agreement has not been concluded.

Agreement on Engagement Terms

34. The Firm shall agree upon the terms of engagement with the management or those charged with governance, as appropriate. The agreed terms of the engagement shall be recorded in an engagement letter or other suitable form of written agreement and shall include:

- (a) The objective and scope of engagement;
 - (b) The responsibilities of the firm;
 - (c) The responsibilities of management;
 - (d) Identification of the applicable financial reporting framework; and
 - (e) Reference to the expected form and content of any reports and a statement that there may be circumstances in which a report may differ from its expected form and content.
35. If law or regulation prescribes in sufficient detail the terms of the engagement referred to above, the firm need not record them in a written agreement, except for the fact that such law or regulation applies and that management acknowledges and understands its responsibilities.
36. Decision to accept or continue any professional engagement and the need for disclosure of any content of the report or view of the individual firm, to appropriate authorities other than the clients (Regulator, Government or other authorities), if any, shall be based on above considerations subject to paragraphs 31 & 32 above.

Criteria for declining, and withdrawing from an Engagement

37. Based on the evaluation of client information and the following factors, the firm will determine and document the boundary conditions beyond which it would be prudent to decline, or withdraw from an engagement:
- (a) Client's status/information that is likely to impact adversely on the independence of the firm.
 - (b) Ability of the firm to provide appropriate service to the client, considering needs for technical skills, knowledge of the industry and personnel.
 - (c) Consider circumstances which would cause the firm to regard the engagement as one requiring special attention or presenting unusual risks.

Integrity of client and ethical requirements on the part of the firm

38. In this context, the following policies and procedures are needed:
- (a) Procedures for the validation of the integrity and reputation of the client or potential client, including key members of management and those charged with governance.
 - (b) Procedures to determine the competence of the firm or practitioner to perform the engagement and availability of resources and adequate time to do so.
 - (c) Ability to meet the ethical and independence requirements.
 - (d) Policies and procedures where information is obtained subsequent to an engagement acceptance or continuation which, if the information had been obtained earlier, would have caused the engagement to be declined.

Assignment of human resources for engagement performance

39. The following policies and procedures need to be established in this context:
- (a) Policies and procedures for assigning the responsibility for each engagement to an engagement partner and communicating this information to client management and those charged with governance.
 - (b) Policies and procedures regarding engagement partner capability, competence and authority.

- (c) Policies and procedures regarding assigning appropriate staff with the necessary capabilities, competence and time to perform engagements.

Assignment of Engagement Partners -Policies & Procedures

- (a) Establish policies and procedures for assigning the responsibility for each engagement to an engagement partner and communicating this information to client management and those charged with governance.
- (b) Policies and procedures regarding engagement partner capability, competence and authority.

LESSON ROUND UP

- Professional peer review focuses on the performance of professionals, with a view to improving quality, upholding standards, or providing certification.
- Peer Review is directed towards maintenance as well as enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements
- A Peer Review examines whether a Practice Unit has adequate policies and procedures in place to comply with the Technical Standards of ICSI and other legal requirements.
- The eligibility for become a Peer Reviewer need to be a Member of the Institute who should—
 - o Possess at least 10 years of post-membership experience and
 - o Be currently in whole time practice as a Company Secretary.

SELF -TEST QUESTIONS

1. What are the practice areas covered under the scope of peer review?
2. What is Peer Review? Describe the process for performing peer review.
3. Describe the Quality Review guidelines on pre-conditions of accepting/continuing any professional engagement.
4. What are the leadership responsibilities covered under the quality control elements within the firm.

Lesson 18

Values, Ethics and Professional Conduct

LESSON OUTLINE

- Introduction
- Types of Ethics
- Professional Ethics
- Ethical Principles for Company Secretaries
- Fundamental Duties of Professionals
- Ethical Dilemma
- Recent Case relating to Ethics and Governance
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Ethics, values and good governance are the fundamentals of life which should be followed in all circumstances and have been a matter of respect, be it in individual context or in the corporate world. Business dynamism demands various evils and vulnerable situations which have pointed out the need to imbibe and inculcate the culture for adherence to ethical practices, governance and leadership. The chapter discusses the various practical aspects of ethical values, ethical dilemmas, and ethical leadership encompassing various human virtues which are ultimately built upon conscience.

INTRODUCTION

India has a very strong history and deep roots of culture, principles and ethics which have come down to us across generations, through the immortal Shrimad Bhagavad Gita which is useful in getting answers to various complex situations and ethical dilemmas. The great epic, Ramayana is also a very important document which has thrown light on aspects like values and character. *Nitishatak* by a noted scholar, *Bhartruhari*, and the teachings of Arya Chanakya (*Chanakya Neeti*) cannot be ignored while talking of character, ethical practices, values and good governance. Aesop Fables, Panchatantra and Hitopadesh are also fictional sources of moral codes.

Today's doing business is full of temptations and distractions driven by greed to earn unlimited profits, market share, market-standing (in terms of numbers), performance, etc., coupled with tremendous pressure and compulsion to remain ahead; wherein organizations alluring individuals working therein to ignore or lose hold on ethical aspects of a business. Social life is dominated by numerical success where "the ends justify the means". Of late, this attitude and temperament believing the philosophy "the ends justify the means" has led to a substantial depletion of good character, ethical standards, practices and good governance. This has led to loss of humanity, and ultimately, happiness of self and society.

The term "ethics" is derived from the Greek word "ethos" which refers to character or customs or accepted behaviours. The Oxford Dictionary states ethics as "the moral principle that governs a person's behaviour or how an activity is conducted". The synonyms of ethics as per Collins Thesaurus are – conscience, moral code, morality, moral philosophy, moral values, principles, rules of conduct, standards.

In the world of intense competition, every professional work on certain principles and beliefs which are nothing but the values. Likewise, ethics is implemented in the organisation to ensure the protection of the interest of stakeholders like customers, suppliers, employees, society and government.

TYPES/BRANCHES OF ETHICS

The four main branches of ethics include descriptive ethics, normative ethics, meta-ethics and applied ethics which can be defined as under:

Descriptive Ethics deals with what people actually believe (or made to believe) to be right or wrong, and accordingly holds up the human actions acceptable or not acceptable or punishable under a custom or law. Descriptive Ethics is also called comparative ethics because it compares the ethics or past and present; ethics of one society and other.

Normative Ethics deals with "norms" or set of considerations how one should act. Thus, it's a study of "ethical action" and sets out the rightness or wrongness of the actions. It is also called prescriptive ethics because it rests on the principles which determine whether an action is right or wrong.

Meta-Ethics or "analytical ethics" deals with the origin of the ethical concepts themselves. It does not consider whether an action is good or bad, right or wrong. Rather, it questions – what goodness or rightness or morality itself is. It is basically a highly abstract way of thinking about ethics.

Applied Ethics deals with the philosophical examination, from a moral standpoint, of particular issues in private and public life which are matters of moral judgment. This branch of ethics is most important for professionals in different walks of life including doctors, teachers, administrators, rulers and so on. There are six key domains of applied ethics viz. Decision ethics {ethical decision making process}, Professional ethics {for good professionalism}, Clinical Ethics {good clinical practices}, Business Ethics {good business practices}, Organizational ethics {ethics within and among organizations} and social ethics.

Business Ethics is one of the branches of Applied Ethics which is mostly used in various organizations & Corporates. It can be defined as, "The application of a moral code of conduct to the strategic and operational management of a business."

KEY DIFFERENCES BETWEEN ETHICS AND VALUES

The fundamental differences between ethics and value are described in the given below points:

- Ethics refers to the guidelines for conduct, that address question about morality. Value is defined as the principles and ideals, which helps them in making the judgement of what is more important.
- Ethics is a system of moral principles. In contrast to values, which is the stimuli of our thinking.
- Values strongly influence the emotional state of mind. Therefore it acts as a motivator. On the other hand, ethics compels to follow a particular course of action.
- Ethics are consistent, whereas values are different for different persons, i.e. what is important for one person, may not be important for another person.
- Values tell us what we want to do or achieve in our life, whereas ethics helps us in deciding what is morally correct or incorrect, in the given situation.
- Ethics determines to what extent our options are right or wrong. As opposed to values, which defines our priorities for life.

To summaries ethics are consistently applied over the period, and remains same for all the human beings. Values have an individualistic approach, i.e. it varies from person to person but remains stable, relatively unchanging, but they can be changed over time due to a significant emotional event.

ETHICAL PRACTICES

- **Beneficence:** The principle of beneficence guides the decision maker to do what is right and good. This priority makes an ethical perspective and possible solution to a dilemma acceptable and resolvable. This is also related to the principle of utility, which states that one should attempt to generate the largest ratio of good over evil possibility. This principle stipulates that ethical theories should strive to achieve greatest amount of good because people benefit from the most good.
- **Least Harm:** This theory deals with situations in which no choice appears beneficial. In such cases, decision makers seek to choose to do the least harm possible and to do harm to the fewest people. This principle is mainly associated with the utilitarian ethical theory discussed below.
- **Utilitarian:** This is a normative ethical theory that places the locus of right and wrong solely on the outcome or consequences of choosing one action/policy over other. As such, it moves beyond the scope of one's own interest and takes into account the interest of others
- **Autonomy:** This principle states that decision making should focus on allowing people to be autonomous; that is, to be able to make decisions that apply to their own workplace or lives. In other words, people should have control over their own selves as much as possible because they are the only people who completely understand their chosen type of work/life style. Each individual deserves respect because only he/she has had those exact life experiences and understands own emotions, motivations, and physical capabilities in an intimate manner. In essence, this ethical principle is an extension of the ethical principle of beneficence because a person who is independent usually prefers to have control over his own experiences in order to secure the lifestyle that he/she enjoys
- **Justice:** The justice ethical principle states that decision makers should focus on actions that are fair to all those involved. This means that ethical decisions should be consistent with the ethical theory unless extenuating circumstances that can be justified and exist in the case. This also means that cases with extenuating circumstances must contain a significant and vital difference from other similar cases that justify the inconsistent decision.

The principles of integrity in business are guided by a set of core ethics that influence their decisions and behavior

which includes: Accountability, Commitment to Excellence, Concern for Others, Fairness, Honesty, Integrity, Abiding Law, Leadership, Loyalty Morale, Keeping Promises, Reputation, Respect for others, Trustworthiness.

PROFESSIONAL ETHICS

Ethics arises from three main factors, moral attitudes as a result of consciousness or awareness-raising, culture as a result of education and the use of know-how and the application of standards as a result of learning and training.

Ethics amount to fundamental moral attitudes, binding values and irrevocable standards. A distinguishing characteristic of a profession is the ability to combine ethical standards with the performance of technical skills. The professionals being exclusive custodian of expertise need to profess high ethical and moral values and to redeem their noble traditions. Every professional should desire for introspection and a dynamic movement to promote a value revolution with deeper conviction and creative consciousness, leading himself to be good professional. The collective wisdom prevail to inculcate highest standards of professional ethics and moral values and adherence to Professional code of conduct in its true letter and spirit.

The principles which govern the conduct of a professional broadly encompasses, Integrity, Professional independence, Professional competence, Objectivity, Ethical behavior, Conformance to technical standards, if any, and Confidentiality of information acquired in the course of professional work. The professionals are expected to conduct themselves in such a manner so as to uphold the grace, dignity and professional standing of the institute.

Companies in the India have begun to fulfill their corporate social responsibility, either voluntarily or in compliance with mandates or statutes, respecting social ethics, thereby, setting up healthy and sensible corporate ethics on the following parameters:

- Complying with the laws of land where business is conducted and engaging in fair practices in the light of social ethics.
- Aiming to become a sensible corporate citizen, and striving for harmony with local society.
- Disclosing information in a timely manner, and engaging in honest and transparent communications mode.
- Protecting the irreplaceable earth and contributing to the preservation of the environment.
- Respecting fundamental human rights and individuality, and building up a corporate culture with a broad vision which fosters the spirit of corporate ethics.

MODEL ETHICAL PRINCIPLES FOR COMPANY SECRETARIES

Professionalism is the virtue, conduct, aim, value or quality that characterize or marks a profession or professional person; it implies quality of workmanship or service. Having a reputation for excellence and being thought of as someone who exhibits professionalism under any circumstances can open doors for him/her in the individual's workplace or personal ambition. Professionals like the Company Secretaries are highly valued by their profession. For any professional the below can be the Golden Rules of Ethics for Professionals. It is recommended to apply these Golden Rules of Professionalism for enjoying a reputable, professional and prosperous career in providing service to the client/ organization:

- **Strive for excellence:** This is the first step to achieving greatness in whatever endeavor one undertakes; it is the quality that marks one's work to stand-out. Excellence is a quality of service which is remarkably good and so it surpasses ordinary standards, it should be made a habit to make a good impression on clients and colleagues
- **Be trustworthy:** In today's society trust is an issue and one who exhibits trustworthiness is on a

fast track to professionalism. It is all about fulfilling an assigned task, not letting down the client's expectations, it is being dependable and reliable when called upon to deliver service. In order to earn this trust, worthiness and integrity it must be sustainably proven over a time-span

- **Be accountable:** It implies that one should be able to stand tall and be counted upon for all actions undertaken; this is also construed as a quality of being credible and responsible for actions performed and their consequences - good or bad
- **Be courteous and respectful:** Courteousness is more than being friendly, polite and well-mannered with a gracious consideration towards others. It makes social interactions in the workplace run smoothly; avoid conflicts and earn respect. Respect is a positive feeling of esteem or deference for a person or organization; it is built over span of time and can be lost with one single inconsiderate action; continual courteous interaction is required to be maintained to enhance the respect gained
- **Be honest, open and transparent:** Honesty is a facet of moral character that connotes positive and virtuous attributes such as truthfulness, straightforwardness, good conduct, loyalty, fairness, sincerity, openness in communication and generally operating in a manner for others to notice the perfection with which actions are performed; a virtue highly appreciated and valued by clients, employers and colleagues because it builds trust and personal reputation
- **Be competent and improve continually:** Competence is the core ability of a professional to do a job properly. It is a combination of quality of knowledge, skill, acumen and behaviour used to perform. Competency grows through experience and to the extent one is willing to learn and adapt. Continuous self-development is a pre-requisite in offering professional service at all times
- **Be ethical:** Ethical behavior is acting within certain moral codes in accordance with the generally accepted code of conduct or rules. It is always safe for a professional to "play by the rules" where the rule book is inadequate; and acting with a clear moral conscience is the right way to adopt
- **High Integrity:** Honorable action is behaving in a way that portrays "nobility of soul, magnanimity of person" derived from virtuous conduct and integrity in adherence to the dictum of "wholeness or completeness" of character in line with certain values, beliefs and principles with consistency in action and outcome
- **Be respectful of confidentiality:** Confidentiality is respecting the set of rules or promises that restricts one from further or unauthorized dissemination of information. Over the course of one's career, information will come to be possessed in strict confidence - either from the organization or from colleagues; and it is important to be true to such confidentiality. One gains trust and respect of those confiding and enhances professional credibility within the organization
- **Set Good Examples:** Applying the foregoing rules helps one to improve traits of professionalism by imparting knowledge to those around and below the rank and file. One ought to show and lead by setting good exemplary life all along. Modern corporate governance rightly demands a comprehensive, interdisciplinary approach to the management and control of companies.

Therefore, professionals need to practice with a sense of responsibility the evolving principles of good corporate governance across the globe on a continual basis. Excellence can be bettered through continuous up-gradation of research and interaction between the relevant practices and control of respective disciplines of Compliance, accounting, finance, law and management functions to deliver the highest quality of good corporate governance.

In this context the corporate looks upon Company Secretaries to provide the impetus, guidance and direction for achieving world-class ethical business practices and strategic corporate governance.

The ICSA (UK) Code of Professional Ethics and Conduct comprises four core principles to which all Fellows, Associates, graduates, students and affiliated members registered need to follow.

1. Integrity

Integrity is the quality of being honest and having strong moral principles. The term has been described judicially as connoting “moral soundness, rectitude, and steady adherence to an ethical code”. It requires that members are impartial, independent and informed. Displaying integrity includes:

- acting professionally in your business dealings;
- displaying a proper understanding and appreciation of your role and responsibilities;
- being respectful of others at all times;
- not accepting or offering improper gifts, hospitality or other inducements;
- avoiding conflicts of interest, or, where a conflict arises, making sure that everyone involved is aware of the interest;
- recognising and considering the ethical issues arising from, and the interests of the groups or stakeholders who may be affected by, your choices, decisions and actions;
- avoiding involvement in any unethical, misleading, illegal or covert behaviour;
- not knowingly ignoring (or turning a blind eye to) unethical, misleading, illegal or obscure behaviour; and
- avoiding bringing the profession into disrepute.

2. High standard of service/professional competence

A high standard of service or professional competence should be delivered throughout one’s working life. This involves an understanding of relevant technical, professional and business developments. Professional competence also takes account of the wider implications and expectations of our members. This includes:

- maintaining professional knowledge and skills which are required to perform the role which you are employed to carry out;
- completing CPD as required by the UKRIAT Committee (this does not apply to students);
- communicating effectively and promptly with your clients, colleagues and stakeholders to ensure that they are able to make informed decisions;
- acting within your level of competence; if this requires an admission to your client that you are unable to perform a task then this should be communicated effectively;
- upholding the requirements of the Royal Charter and byelaws made under it; and
- respecting the confidentiality of information acquired through professional relationships save where there is a legal or regulatory requirement to disclose or report that information.

3. Transparency

Transparency requires that members are clear and open in their business and professional conduct. This includes:

- being open and frank in any business dealings;
- not being underhand in any business transaction; and
- treating all work as if it was reported in the public domain

4. Professional behavior

Professional behavior requires that members act in a way which conforms to the relevant laws of the jurisdiction in which they are residing and/or undertaking business transactions. It requires them also to pay regard to all regulations which may have a bearing on their actions and to adhere to the byelaws, specifically byelaw which states that the following actions or inactions may result in disciplinary proceedings:

- becoming bankrupt or insolvent;
- being convicted of an offence which might bring discredit on the Institute or the profession;
- failing to uphold the code of professional conduct and ethics;
- behaving, by doing something or not doing something, in a way considered by the Disciplinary Tribunal to bring the Institute or the profession into disrepute;
- disobeying any decisions of the Council or of one of its Divisional Committees;
- breaking any of the Institute's byelaws or Charter or Regulations;
- failing to comply or co-operate with a disciplinary investigation; or
- failing to comply with a decision or any conditions made by a Disciplinary or Appeal Tribunal.

The Singapore association of the Institute of Chartered Secretaries and Administrators (ICSA) requires members to observe the highest standards of professional conduct and ethical behaviour in all their activities. By maintaining these standards, members enhance their reputation as corporate advisors and increase confidence in the management and administration of private and public sector organisations. As the conduct of an individual member can reflect upon the wider profession of corporate management and the Institute's membership as a whole, the Code sets out what are deemed to be appropriate standards of professional conduct:

- Members are required to uphold the Institute's Charter and comply with the Bye-laws.
- Members shall at all times be cognisant of their responsibilities as professional people toward the wider community.
- Members shall at all times safeguard the interests of their employers, colleagues or clients provided that Members shall not knowingly be a party to any illegal or unethical activity.
- Members shall not enter into any agreement or undertake any activity which may be in conflict with the legitimate interest of their employer or client or which would prejudice the performance of their professional duties.
- Members shall not use any confidential information obtained in the performance of their duties for personal gain nor in a manner which would be detrimental to their employer, client or any other party.
- Members shall ensure the currency of their knowledge, skills and technical competencies in relation to their professional activities.
- Members shall refrain from conduct or action which detracts from the reputation of the Institute.

ICSI CODE OF CONDUCT

The purpose of Code of Conduct is to lay down certain ground rules to promote ethical conduct and good practices and to deter wrong-doing and also to make the relationship mutually pleasant and productive and to enhance the sense of community with common values and mission. Further Code of Conduct is a step towards ethical decision making in which strategic management decisions result from due deliberations and objective analysis of facts, distanced from personal biases, leanings, subjectivity or emotional perceptions. The matters covered under the Code are of utmost importance to The Institute of Company Secretaries of India ("Institute"),

its members, students and other stakeholders including Government, Regulators, Trade and Industry and other users of services of the Company Secretaries.

Fundamental duties of Professional

(i) Fair Dealing

Each member of the institute should endeavour to deal fairly with the Clients, other members and students. No Member of the Institute should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair dealing practice.

In addition to strict compliance with all legal aspects, all members are expected to observe the highest standards of business and personal ethics.

A Professional must also:

- act in the best interests of a client in any matter in which he represents the client;
- be honest and courteous in all dealings in the course of legal practice;
- deliver legal services competently, diligently and as promptly as reasonably possible;
- avoid any compromise to their integrity and professional independence; and
- comply with applicable Rules and the law.

(ii) Professional Opportunity

The professional should not exploit for their own personal gain, opportunities that are discovered through third party, information or position unless the opportunity is disclosed fully in writing and permits to pursue such opportunity.

(iii) Mistakes of Other Solicitor

A professional must not take unfair advantage of the obvious error of another professional or other person, if to do so would obtain for a client a benefit which has no supportable foundation in law or fact.

(iv) Confidentiality

The client's confidential information is a valuable asset. All confidential information must be used for the benefit and in the best interest of client. Every professional must safeguard the confidentiality as above.

The confidential information, discussions, documents and data should be dealt with utmost care and should not be shared or passed on to any person/outsider under any circumstances, directly or indirectly without authorization.

A professional must not disclose any information which is confidential to a client and acquired by him during the client's engagement to any person who is not:

- a partner, promoter, director, or employee of the firm of the professional; or
- a professional or an employee of, or person otherwise engaged by, the firm of professional or by an associated entity for the purposes of delivering or administering legal services in relation to the client, except the following:
 - the client expressly or impliedly authorises disclosure;
 - the professional is permitted or is compelled by law to disclose;

- the professional discloses the information in a confidential setting, for the sole purpose of obtaining advice in connection with the solicitor's legal or ethical obligations;
- the professional discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence;
- the professional discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person; or
- the information is disclosed to the insurer of the professional or its associated entity.

(v) Inadvertent Disclosure

A professional who reads part or all of the confidential material before becoming aware of its confidential status must:

- notify the same or the other person immediately; and not read any more of the material.
- If a professional is instructed by a client to read confidential material received in error, the solicitor must refuse to do so.

(vi) Conflicts

Each professional should avoid any conflict of interests with that of the client. A 'conflict of interest' exists where the interests or benefits of one person or entity conflict with the interests or benefits of the client. The professional must avoid situations involving actual or potential conflict of interest.

Any situation that involves or may involve a conflict of interest must be promptly disclosed. No transaction, which involves an actual or potential conflict of interest, should be undertaken by professional

A professional must not act for a client where there is a conflict between the duty to serve the best interests of a client and the interests of the professional or an associate of the professional, except as permitted.

A professional must not exercise any undue influence intended to dispose the client to benefit the professional in excess of the professional fair remuneration for legal services provided to the client.

A professional must not borrow any money, nor assist an associate to borrow money, receiving a financial benefit from a third party in relation to any dealing where the professional represents a client, or from another service provider to whom a client has been referred by the professional, provided that the professional advises the client:

- (i) that a commission or benefit is or may be payable to the professional in respect of the dealing or referral and the nature of that commission or benefit;
- (ii) that the client may refuse any referral, and the client has given informed consent to the commission or benefit received or which may be received.

acting for a client in any dealing in which a financial benefit may be payable to a third party for referring the client, provided that the solicitor has first disclosed the payment or financial benefit to the client.

(vii) Undertakings

A professional who has given an undertaking in the course of legal practice must honour that undertaking and ensure the timely and effective performance of the undertaking, unless released by the recipient or by a court of competent jurisdiction.

A professional must not seek from another professional, or that professional's employee, associate, or agent, undertakings in respect of a matter, that would require the co-operation of a third party who is not party to the undertaking.

(viii) Integrity of evidence

A professional must not:

- advise or suggest to a witness that false or misleading evidence should be given nor condone another person doing so; or
- coach a witness by advising what answers the witness should give to questions which might be asked.

A professional will not have breached by:

- expressing a general admonition to tell the truth;
- questioning and testing in conference the version of evidence to be given by a prospective witness; or
- drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not encourage the witness to give evidence different from the evidence which the witness believes to be true.

(ix) Client documents

A professional with designated responsibility for a client's matter, must ensure that, upon completion or termination of the law practice's engagement:

- the client or former client, or another person authorised by the client or former client, is given any client documents, (or if they are electronic documents copies of those documents), as soon as reasonably possible when requested to do so by the client, unless there is an effective lien.
- a professional may destroy client documents after a period of 7 years has elapsed since the completion or termination of the engagement, except where there are client instructions or legislation to the contrary.

(x) Dealing with other persons

A professional must not in any action or communication associated with representing a client:

- make any statement which grossly exceeds the legitimate assertion of the rights or entitlements of the client, and which misleads or intimidates the other person;
- threaten the institution of criminal or disciplinary proceedings against the other person if a civil liability to the client is not satisfied; or
- use tactics that go beyond legitimate advocacy and which are primarily designed to embarrass or frustrate another person.
- In the conduct or promotion of a professional practice, the solicitor must not seek instructions for the provision of legal services in a manner likely to oppress or harass a person who, by reason of some recent trauma or injury, or other circumstances, is, or might reasonably be expected to be, at a significant disadvantage in dealing with the solicitor at the time when the instructions are sought.

(xi) Anti- discrimination and Harassment

A professional must not in the course of practice, engage in conduct which constitutes:

- discrimination;
- sexual harassment
- workplace bullying – “bully by proxy”

(xii) Dealing with the Media

- A professional must not publish or take steps towards the publication of any material concerning current proceedings which may prejudice a fair trial or the administration of justice.
- To adhere to practice promotion, advertising and solicitation rules, codes and legislation in use and avoid Conflicts of interest
- Maintaining public confidence and faith in the profession

Ethical Dilemma

Dilemma means a situation in which a difficult choice has to be made between two courses of action, either of which entails contravening a moral principle. An ethical dilemma or ethical paradox is a decision-making problem between two possible moral imperatives, neither of which is unambiguously acceptable or preferable. The complexity arises out of the situational conflict in which obeying one would result in transgressing another.

Ethical Dilemma is the situation where a person's view regarding selecting an object or the alternative includes series of outcomes, which is very confusing. Each outcome has a serious overlapping outcome, which cannot be at a time wrong for one person but the same may be ethically wrong for the other.

An "absolute" or "pure" ethical dilemma only occurs when two (or more) ethical standards apply to a situation but are in conflict with each other. In ethical dilemma if we obey one decision then it would bring about disobeying another.

Ethical dilemma is also known as moral dilemma. Ethical dilemmas make the situations too difficult. A person has to choose only one way from two of them - a moral or an immoral way. Ethical dilemmas can be seen everywhere in daily lives. However everybody has their own particular experience towards ethical dilemma. Ethical dilemmas assume that the chooser will abide by societal norms, such as codes of law or religious teachings, in order to make the choice ethically impossible.

Some examples of ethical dilemmas include:

- A secretary discovers her boss has been laundering money, and she must decide whether or not to turn him in
- A doctor refuses to give a terminal patient morphine, but the nurse can see the patient is in agony
- While responding to a domestic violence call, a police officer finds out that the attacker is the brother of the police chief, and the police chief tells the officer to "make it go away"
- A government contractor discovers that intelligence agencies have been spying on its citizens illegally, but is bound by contract and legalities to keep his confidentiality about the discovery.

Common Causes of Loss of Ethics and Values

1. Unclear Policies In some cases, managers and employees exhibit poor ethical behaviour because the company does not offer a clear model of ethics. Some businesses have no formal ethical policy documents and offer no guidance at all. Others have policies that are unclear, vague, inconsistent or not consistently enforced.

2. Conflict between Organisational & Individual Goal: When the Organizational & Individual Goals overlap, it becomes difficult to balance things. The problem arises when one thing has to be sacrificed for the sake of others. To achieve Organisational goal, Individual goal, has to be compromised and vice versa so this leads to Ethical Dilemma.

3. Cultural Value & Background: Every individual decision is based on background. For some people it may be ethical to give priority for self and then decide about others but for some others it may be other way round. Thus background & value system creates the ethical Dilemma.

4. Situation when a decision is taken by a manager, it may be so that situation demands him to decide on certain things which dealing with Ethical Dilemmas Each Company's culture is different, but some companies stress profits and results above all. In these environments, management may turn a blind eye to ethical breaches if a worker produces results, given the firm's mentality of "the end justifies the means." are not beneficial for all but will benefit the company alone. Example - Automation of a plant.

5. Dynamic & Different Human Nature: Ethical Dilemma arises due to difference of the opinion among the group of people. Whatever is ethical for one person, may be unethical for another.

6. Ambition and Discrimination Individual workers may be under financial pressure or simply hunger for recognition. If they can't get the rewards they seek through accepted channels, they may be desperate enough to do something unethical, such as falsifying numbers or taking credit for another person's work to get ahead. Though diversity is an important part of business, some people may not be comfortable with people from different backgrounds and possibly be reluctant to treat them fairly. This kind of discrimination is not only unethical but illegal and still remains common.

7. Pressure from Management: Each company's culture is different, but some companies stress profits and results above all. In these environments, management may turn a blind eye to ethical breaches if a worker produces results, given the firm's mentality of "the end justifies the means." Whistle-blowers may be reluctant to come forward for fear of being regarded as untrustworthy and not a team player. Therefore, ethical dilemmas can arise when people feel pressurised to do immoral things to please their bosses or when they feel that they can't point out their co-workers' or superiors' bad behaviours.

8. Negotiation Skills: While these factors can cause ethical dilemmas for workers within their own companies, doing business with other firms can also present opportunities for breaches. Pressure to get the very best deal or price from another business can cause some workers to negotiate in bad faith or lie to get a concession.

9. Conflicting Values: Ethical dilemmas may occur because of conflicting values between two or more people in an organization. One manager may value product quality over quantity while another may value thriftiness. These managers may discuss changing to a cheaper supplier for a material used in production because of the potential to save money. However, the first manager may object because he knows the cheaper material will produce a product of lesser quality, which is not good for customers. Without a culture of shared values, the least ethical choice may be approved.

Organisation for Economic Co-operation and Development (OECD) has also described various principles on "Corporate Governance" one of these Principle includes Disclosure and Transparency, which states "The Corporate Governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company."

An Organization Transparency checklist includes the below mentioned traits:

- Board meetings (Dates, times and locations of Board meetings are conveyed at least one week in advance of the meetings)
- Financial disclosure statements (Non-profits should consider posting their audited financial statements on their website)
- Freedom of information legislation (Rules that guarantee access to data held by the state; they establish a "right-to-know" legal process where requests can be made for government-held information)
- Budgetary reviews
- Annual audits
- Annual Reports (Posted on the organization's website for easy access)

- Strategic plans and priorities
- Board of Directors and names of key staff as well as their contact information (Posted on the organization's website)
- Straight talking leadership
- Open culture and operations (many voices on behalf of the organization)
- Disclosed partnerships
- Frank, open communications including the good and bad
- Core values & Code of conduct.

HOW TO RESOLVE ETHICAL DILEMMA

Think about outcomes if you find yourself in a situation when this approach doesn't work, you can resolve a right versus right dilemma by finding the highest "right." Kidder wrote that there are three ways to make the best choice when faced with these types of dilemmas:

- Ends-based: Select the option that generates the most good for the most people.
- Rule-based: Choose as if you're creating a universal standard. Follow the standard that you want others to follow.
- Care-based: Choose as if you were the one most affected by your decision. Once you've identified an ethical right versus right dilemma, lay out your options according to these three principles. One approach will immediately present itself as the "most right".

STRATEGY FOR OVERCOMING FROM THE EVILS

For any organization the systematic and rigorous approach coupled with efforts is necessary to keep governance standards at the highest level by nurturing of ethical values and standards well embedded from the inception of the organization. It needs further conscious cultivation during the growth phase. It is equally important to remember that organizations or institutions act through its own employees.

Technology is only a means — a handmaid available at the disposal of humans and it cannot be a substitute; even in the society of the future where robots will take a dominating and universal position. Therefore, the human beings need proper and rigorous grooming. Thus, it is necessary that any attempt to address ethical issues is to be handled by human beings and not machines.

The human traits and characteristics shape human behavior and a few probable solutions are explained below:

(i) Satisfaction

To achieve happiness it is essential that the culture of 'being satisfied' is developed. However, the most challenging and unanswerable question on satisfaction is "How much is Enough" The issue is very difficult to resolve especially in the corporate field where expansion is the prime direction in which it is supposed to move; yet it is the need of the hour to understand and remain satisfied with what is achieved within the validly available means.

(ii) Ends not to justify the means

It is often said that the results matter and what was done to achieve the same is of no consequence. The statement may appear encouraging; but reading between the lines it is not the intention to achieve results by compromising ethics and values. The need of compromising ethics and values arises when there is a dearth of valid means to achieve the end-result. The thirst to succeed, vaulting ambition and flawed education are

equally responsible elements. It is essential to note that however worth the cause may be, the means to achieve the same should also be equally valid. An irregular or an unethical action leading to a good outcome may not necessarily justify the method of achieving the goal.

(iii) Ethical Leadership

The Professional should lead the organisation like Krishna as he led Pandvas to success by guiding them to fight morally. It is the duty of the leader driving the organization to ensure use of proper and ethical means in his conduct. It is equally essential that the leader walks the talk and sets an example of good governance and ethical leadership.

(iv) Character

Professional should always consider the old idiom: If Character Is Lost Everything Is Lost. The idiom amply highlights the importance of good character. Character is generally built or earned by virtues like courage, honesty, values and ethics. Great leaders and eminent personalities are judged by their character. A good character is synonymous to reliability.

Recent Cases on Values, Ethics and Professional conduct

*(i) Two recent events in the financial sector offer many corporate governance lessons. In one case, the government and its agencies were involved and left behind questionable precedents. In another private sector institution, a former government employee is involved though the manner of his involvement raises questions. These events are juxtaposed with larger societal questions related to saving institutions and jobs and ensuring financial stability.

The first example relates to the government's decision to sell its stake in IDBI Bank to the Life Insurance Corp. of India (LIC). IDBI Bank's non-performing assets (NPAs) have been mounting, as have been its losses. Its capital adequacy barely meets the regulatory benchmarks. In short, the bank is floundering without a visible lifeline. The government, as the largest shareholder, provided one tranche of capital infusion but clearly that was not enough.

The speed at which the IDBI-LIC deal was approved seems to indicate that an inherent hierarchical priority has been superimposed over the IRDAI's approval process.

Thereafter, the government was faced with three choices. One, to provide more capital. But the government's kitty is limited and must deal with competing claims. Two, it could extinguish the legal entity by either merging it with a stronger public sector bank or shutting it down. The former option involves consciously infecting another public sector bank with IDBI's bugs. Shutting it down, on the other hand, is a political risk in a pre-election year. Three, the government could sell it off, but no private sector bank would want to risk it. The next best solution: force-feed it to another public sector entity which cannot say no to the government.

Enter LIC, the government's preferred sick bay for ailing public sector banks, especially those which the government does not want to (or cannot) recapitalize, downsize or shut down. The transaction raises multiple questions about acceptable corporate governance norms.

First, how did LIC get the money to pay the government for its stake in IDBI Bank?

Any money it pays out has to be from policyholders' funds, or the premium they pay to the insurance company every so often. Ideally, any excess money belongs to policyholders and must be returned to them after deducting expenses and provisions. This then raises ethical questions: are the funds invested in IDBI Bank sourced from the surplus which should have been returned to policyholders but has now been diverted? Also, theoretically, LIC's investment in IDBI Bank breaches the investment mandate approved by government and regulator.

* Source: Live Mint Published on July 09, 2018 title Corporate Governance Lessons from IDBI-LIC deal and ICICI Bank.

The other issue is the regulator's discretionary powers. The Insurance Regulatory and Development Authority (IRDAI) seems to have approved the IDBI-LIC deal in record time. In most other cases, IRDAI takes its time in assessing risks to policyholders and the impact any proposed deal is likely to have on the industry and its stability. The speed at which the IDBI-LIC deal was approved seems to indicate that an inherent hierarchical priority has been superimposed over the regulator's approval process, which accords undue urgency to deals involving the government. This is a dangerous precedent.

It can be argued that saving the bank is part of the sovereign's social and moral contract: It is duty-bound to ensure financial stability (which includes safety of depositors' money), save jobs and make all efforts to ensure asset turnaround. And, the argument goes, the government can circumvent some of the rules for this purpose.

Focusing on asset turnaround is also the philosophical keystone for the current bankruptcy and resolution process. The Committee Report on Resolution of Stressed Assets, or Sashakt, also echoes similar values. If we consider IDBI Bank to be a stressed asset, then its resolution process contradicts some of the committee's suggestions: transparent market-based solution, free from government intervention, paradigm shift in governance and risk process.

The second example where corporate governance questions arise relate to ICICI Bank and the raging debate over the board's embarrassing flip-flops. The same board seems to have now waded into deeper, murkier waters in their attempts to ameliorate the early situation.

The board belatedly, and probably under pressure, has agreed to an independent probe into allegations of impropriety by chief executive Chanda Kochhar, who is on leave till the enquiry is complete. Thereafter, the board's process for selecting a new chief operating officer (COO) designate in Sandeep Bakhshi seemed as arbitrary and opaque. Interestingly, the press release announcing the board's decision to appoint Bakhshi as COO includes an intriguing statement: "Mr. Bakhshi will report to Ms Chanda Kochhar, who will continue in her role as MD & CEO of ICICI Bank...During her period of leave, the COO will report to the Board." If Bakhshi has to report to Kochhar for the next five years, assuming she gets a clean chit, how much discretion and independence will he exercise now?

That brings us to the new chairman. Former bureaucrat Girish Chaturvedi has been appointed as the new chairman though it is unclear how the selection was made. Was there any government intervention? The ICICI Bank board is yet to share the processes it adopted for selecting Chaturvedi. There are also news reports of Chaturvedi and Bakshi having interacted earlier—as insurance secretary and chief executive officer (CEO) of ICICI Lombard, respectively. While it is good for any company to have the CEO and chairman acting in harmony, it is also true that too much familiarity breeds multiple evils, especially of the corporate governance type.

(ii) In another instances the Two of India's most iconic and respected companies have been hit by damaging publicity caused when their previous chairmen objected to the way the businesses were being run by their successors. In both cases, the main accusations have been that the new managements were breaking established traditions and ethics.

This has led to questions not only about the wisdom of the former chairmen's outbursts, but also what it has revealed concerning the general state of India's corporate integrity.

Tata, India's biggest and most respected conglomerate, has begun to emerge from its four months of damaging publicity with a new executive chairman, Natarajan Chandrasekaran, who took over on February 21, 2017 from Ratan Tata at Tata Sons, the main holding company.

Previously chairman for 21 years, Tata had reappointed himself as interim chairman on October 24, 2016, when he organized a boardroom coup that ousted his successor, Cyrus Mistry, triggering legal challenges to his action and media exposure to negative aspects of his legacy.

The other blue-chip company under scrutiny is Infosys, which is widely regarded as one of the most ethical and entrepreneurially successful of India's big information technology companies, rivaled only by Tata's TCS

and Wipro. The criticisms were launched with maximum publicity by Narayana Murthy, who founded Infosys 36 years ago and served as the company's first CEO. Questions were raised about boardroom ethics and were aimed primarily at the current chief executive officer, Vishal Sikka, and at R. Seshasayee, the chairman of the board and former head of Hinduja Group's Ashok Leyland and IndusInd Bank.

(iii) In Another instance, The country's largest two-wheeler maker Hero MotoCorp has sacked around 30 employees for violation of the company's code of conduct, These executives were found fudging travel expense bills, accepting personal favours, gifts and other benefits from some of vendors, suppliers and dealers in violation of the company's internal 'code of conduct'.

The executives were given marching orders after "thorough investigations" into the allegations against them, All due legal procedures were followed before taking the final action. Third-party independent investigators were appointed to look into these cases once the anomalies were detected in the activity record of these executives.

Stressing on the significance of the step, the official said," We have always had a clearly laid out Code of Conduct for all our employees and it is absolutely mandatory for everyone working at Hero to abide by it. Integrity and value-based behaviour is a way of life at Hero and no one violating these principles has any place in this organisation".

Hero MotoCorp's management was unanimous in its view that the concerned employees could not continue in the company, once it was established. The employees were given due opportunities to present their cases. When confronted with evidence, they owned up to the wrongdoing, official said. He, however, declined to share the names and designations of the sacked employees.

Source <https://economictimes.indiatimes.com/news/company/corporate-trends/hero-motocorp-sacks-around-30-employees-for-ethics-code-violation/articleshow/64064208.cms>

PNB Fraud

In the matter of the PNB fraud, The CBI questioned a general manager of Punjab National Bank who handles the treasury section, in connection with the alleged Rs 12,636-crore fraud perpetrated by billionaire jeweler Nirav Modi and his uncle Mehul Choksi, The questioning came a day after the CBI arrested four people -- two employees and an auditor of Nirav Modi's group of companies, and a director of Gitanjali Group of Companies. It is alleged that Choksi and Modi got Letters of Undertakings (LoUs) and Foreign Letters of Credit (FLCs) of Rs 12,636 crore issued in favour of foreign branches of Indian banks based on fraudulent claims. The accused officials of PNB did not enter the instructions for these LoUs and in their internal software to avoid scrutiny. They were sent through an international messaging system for banking called SWIFT, which is used to pass instructions among banks globally to transfer funds. An LoU is a guarantee which is given by an issuing bank to Indian banks having branches abroad to grant short-term credit to the applicant. In case of default, the bank issuing the LoU has to pay the liability to the credit giving bank along with accruing interest. The PNB officials allegedly sent these messages to Indian banks - Canara Bank, State Bank of India, Bank of India, Axis Bank, Allahabad Bank -- located in Antwerp, Hong Kong, Bahrain, Mauritius, Frankfurt without making entries in the banking software about the LoUs. Upon receiving the messages from PNB under SWIFT, the banks abroad transferred these amounts into Nostro account of PNB with them. Nostro account is an account that a bank holds in a foreign currency in another bank to enable foreign trade by its clients.

Recent Cases Business and Professional Conduct

1. United Drags a Bloodied Passenger Off a Flight

United Airlines felt the fallout worldwide when two security officers forcibly removed a bloodied passenger off an overbooked United flight. Consumers worldwide reacted with horror and quickly called for a boycott. Making matters worse: United CEO Oscar Munoz apologized for the incident in rather sanitized corporate speak, saying “this is an upsetting event to all of us here at United” — underestimating just how viscerally disturbing the video had been, and how dissatisfied fliers were with the airline industry. Adding salt to the open wound, media reports revealed that Munoz had called Dao “disruptive and belligerent” in a letter to employees.

While the incident wasn’t expected to hurt profits, the debacle struck a chord among consumers who have dealt with years of flagging service standards aboard flights. Even after Dao and United settled out of court, the frustrations unleashed upon airlines would not stop, with complaints against airlines up 13% in the six months following the incident, according to data from the U.S. Department of Transportation.

2. 21st Century Fox and Bill O’Reilly

Sexual harassment allegations plagued many companies in 2017, including the entertainment giant 21st Century Fox. Fox’s woes started in 2016, with former anchor Gretchen Carlson filing a lawsuit against Fox News Channel’s news chief Roger Ailes, alleging sexual harassment. But it didn’t stop there. It was reported that star commentator Bill O’Reilly had paid five millions to keep allegations of sexual harassment in the dark. Upon hearing the news, advertisers hastily suspended their segments during the O’Reilly Factor. By April, O’Reilly was out. Still, the news was upsetting to shareholders who considered the multiple allegations a sign of a company culture that allowed for sexual harassment. Adding fuel to the fire: Fox reportedly knew of the claims against O’Reilly when it decided to give him a new contract in January. Thus in November, Fox agreed to pay \$90 million to settle shareholder claims related to the O’Reilly and Ailes scandal, and create a council focused on creating a proper workplace environment.

3. Alphabet and Facebook

The year following the presidential election became one for Congress and internet titans to rethink their role in the democratic process. Amid speculation that fake news spread on social media may have influenced the 2016 elections, giants such as Facebook and Google appeared to dismiss the possibility. But that changed in 2017, with Facebook and Google which derive a major chunk of their revenue from ad placements both saying that they had found accounts tied to the Russian government. Facebook reported some 3,000 Kremlin-linked ads aimed at dividing the country that had been bought on its platform. Google, meanwhile, found tens of thousands of ads bought by Russia-linked entities on YouTube and Gmail. Twitter also revealed that a news outlet paid for by the Russian government, Russia Today, had spent \$274,000 in ads on the platform in 2016. There’s no indication that the questions will stop any time soon. Twitter, Facebook, and Google are still investigating how much Russian activity there had been on their platforms. Adding to big tech’s big problems: Congress appears to be taking a harder stance against the sector, with some on Capitol Hill questioning the way they are getting users to keep coming back.

4. Harvey Weinstein’s Multiple Sexual Assault Accusations

Weinstein’s story is one that can’t be concocted in even the most twisted of Hollywood films. Starting in October, more than 100 actresses came forward with accusations of sexual misconduct against the Hollywood kingpin dating back for decades. Weinstein apologized — but it wasn’t enough to save the producer of Oscar-winning films from termination from Weinstein Co. Nor did it calm the public’s growing outrage over how Weinstein had managed to maintain his position for so long.

In his attempts to silence those accusations, Weinstein allegedly hired ex-Mossad agents to tail the accusers in question. But as turns out, it wasn't just Weinstein's reported spies and threats that kept him in power, but also a following of billionaire friends that kept him safe within Weinstein Co., despite signs that Weinstein was using company funds for personal projects in 2015. Weinstein later agreed to repay more than \$7 million to the company.

But perhaps the most significant sea change: It sparked a wave of once silent men and women to speak out about their experiences with sexual harassment.

Weinstein has categorically denied taking part in any non-consensual sex.

5. Equifax's Data Breaches

Credit rating firm Equifax makes its profits from selling personal, often sensitive information to financial institutions and lenders. But in September, it revealed that it had been at the center of one of the worst data breaches in history, with the information of some 145 million people, about half of the U.S. population, compromised. In the aftermath, CEO Richard Smith stepped down, as well as its chief information officer and chief security officer, amid revelations that Equifax was aware of the system flaw that the hackers took advantage of since March. Then, when the hack did happen, the firm waited a full two months before disclosing it. Meanwhile, the Justice Department is reportedly looking into whether top Equifax executives committed insider trading when selling some \$1.8 billion in shares just before the breach was disclosed.

6. Samsung's Bribery Charges

In 2016, Samsung dealt with exploding Note 7 batteries. In 2017, it was imploding corporate ranks. Originally planning to put their Lee Jae-yong at the head of the empire, the family-run Samsung conglomerate is now facing questions of succession after Lee was caught in a sprawling political scandal that took down former South Korean President Park Guen-hye. Lee Jae-yong is now facing five years (and potentially 12) in jail for offering allegedly offering bribes to Park, embezzlement, and hiding assets overseas. Samsung Electronics co-CEO Kwon Oh-hyun meanwhile also resigned in October, citing Samsung's leadership woes. "As we are confronted with unprecedented crisis inside out, I believe that time has now come for the company [to] start anew, with a new spirit and young leadership to better respond to challenges arising from the rapidly changing IT industry," he said in a statement. While Samsung's long-term health is still on shaky ground, the company's near-term outlook belies those worries. The company posted record-breaking profits in the third quarter of \$12.8 billion, almost triple the number it posted a year earlier.

7. Kobe Steel, Mitsubishi Materials, and Japan's Corporate Governance Woes

Japan's economy notched its longest GDP growth streak since 2001 in the third quarter of 2017. But underlying it's steady recovery: A wave of quality-faking admissions from some of Japan's biggest companies that's has raised questions about the country's standing as a manufacturing powerhouse.

In October, Kobe Steel revealed that it falsified information on some items sold to Boeing, Ford, Toyota, and others since 2007; Mitsubishi Materials, which said it faked data on auto and airplane parts affecting some 274 clients; and Toray, a manufacturing giant that revealed that it had fudged data for cords used to reinforce tires since 2008.

Carmakers Nissan and Subaru also recalled 1.2 million and 395,000 vehicles respectively in 2017, saying unqualified inspectors were allowed to vet their cars in the final checks for decades.

While the scandals haven't revealed any major safety issues, they are negative for Japanese businesses. As lower cost alternatives from China and South Korea have proliferated through the market, Japan has competed mainly by pointing to the high quality of its products as a bulwark.

Analysts, though, say the series of scandals that have come out in recent months suggest that those Japanese quality standards may have been set too high.

8. Wells Fargo's Woes Continue

After losing the trust of consumers in 2016 for creating millions of fake accounts, Wells Fargo struggled mightily to win back its customer base with promises of transparency and reform. But Wells Fargo's woes only deepened in 2017, when the company admitted that it had charged as many as 570,000 consumers for auto insurance that they did not need. Additionally, some 20,000 of those borrowers may have had their cars repossessed as a result. Wells Fargo said it would pay \$80 million in remediation. Wells Fargo's head of consumer banking and some 70 senior managers in the bank's retail banking segment were also cut as a result. In the same year, Wells Fargo also revealed that it had uncovered an additional 1.4 million fake accounts on top of the 2.1 million the bank previously disclosed had been created without consumer permission.

9. Apple's Slowed Down iPhones

The tech giant's year ended with a bang, after reports that Apple had purposely slowed down older iPhones to compensate for decaying batteries. It appeared to feed into a long-time conspiracy theory among some Apple users: that the company had been purposely slowing down old models when a new version came out in a bid to force consumers to upgrade. Now, the company is facing lawsuits for allegedly slowing down the devices without first warning consumers. In response, Apple has apologized for slowing down the iPhones, calling it a "misunderstanding," and offered to sell battery replacements for \$29 instead of the usual \$79. Apple has said that once the battery is replaced, the iPhone's speed will pick up again.

LESSON ROUND UP

- The ethics include descriptive ethics, normative ethics, meta-ethics and applied ethics.
- Ethics refers to the guidelines for conduct, that address question about morality. Value is defined as the principles and ideals, which helps them in making the judgement of what is more important.
- Ethics arises from three main factors, moral attitudes as a result of consciousness or awareness-raising, culture as a result of education and the use of know-how and the application of standards as a result of learning and training.
- A professional must not exercise any undue influence intended to dispose the client to benefit the professional in excess of the professional fair remuneration for legal services provided to the client.

SELF -TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Define ethics and the various types of ethics.
2. What are principles which should be adopted by the company Secretaries to become successful?
3. Describe the duties of professional which are to be performed by every professional.
4. Define the common causes of loss of ethics and values by professionals.

Lesson 19

Due Diligence – I

LESSON OUTLINE

- Overview of Due diligence
- Need for Due diligence
- Objective of Due diligence
- Scope of Due diligence
- Conducting Due diligence
- Stage / Process of Due diligence
- Type of Due diligence
- Due diligence on Competition law
- Due diligence for Merger and Amalgamation
- Due diligence for Takeovers
- Due diligence for Issue of Securities
- Due diligence report for Bank
- FEMA Due diligence
- FCRA Due diligence
- Non-Disclosure Agreements
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Business transactions in dynamic business environment require detailed analysis, as it involves number of issues both financial and non-financial that requires careful and methodological investigation of business processes and the parties involved. Due diligence is an art of evaluation of a business transaction through methodical investigation of financial; business, technical and human aspects and its' impact before and after the business transaction.

After reading this lesson student will be able to understand the concept of due diligence, types of business transactions requiring due diligence, types of information analyzed during due diligence process, concept of data room, confidentiality elements in due diligence process etc.

OVERVIEW OF DUE DILIGENCE

Due Diligence is the process by which confidential legal, financial and other material information is exchanged, reviewed and appraised by the parties to a business transaction, before entering in to the transaction with the other party. However, In general the Due Diligence can be defined as under:

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

As a part of the business strategy, the Companies before making any relationship with the other party conduct the background checks of the client, customer, supplier etc. to ensure that the parties to the transaction have the disclosed the information as required to proceed with the transaction and is a process to completely understand a business capability and its past performance.

While exploring any business opportunity, it is the foremost requirement for a corporate to investigate and evaluate the potential and risk associated with such business. The due diligence cover the activities relating to pre-transaction, During the transaction and post transaction exercise with all relevant aspects of the past, present, and predictable future of the any business.

After the conduct of the due diligence, a due diligence report prepared to provide information and insight on the various aspects such as the risks of a transaction, the value at which a transaction should be undertaken, the warranties and indemnities that needs be obtained from the vendor etc.

In any transaction, the seller does investigation of a buyer to ensure that the buyer has adequate resources to complete the transaction, as well as other business aspect covering the technical and human resource, cultural, taxation etc. which would affect the company after entering in to the transaction. the chapter covers the various types of due diligence performed by the company on voluntarily and for entering to the any business transaction or before going for any corporate action relating to the merger, de-merger, amalgamation, take over, joint venture etc.

NEED FOR DUE DILIGENCE

In any business, Instances of misrepresentations and fraudulent document disclosure and activities are not easily traceable and are not always obvious or straight and for a company it is necessary to uncover such misrepresentations, especially in case of the major business decision, as it would create a major impact on the business. The detailed due diligence of every business aspect explore all possible risk and provide the platform for becoming fully informed about the financials, business, internal systems, profitability, key operational aspects, management team, promoters and other material factors which help in making an informed decision. The ultimate object of the Due diligence is to protect the interests of the Company by providing reliable information on the target company before making any written commitments.

The main object of due diligence is like a peep hole to analyses target Company's before opening of the door, this includes the success and potential, opportunities for the growth of business, and the goals and objectives of the company. The due diligence exercise is needed to confirm that the nature and genuineness of a business, Identify defects/weakness and to avoid a bad business transaction, to gather information that is required for valuation of assets, and to negotiate in a better manner. Hence the due diligence exercise is considered as SWOT analysis which is essentially required to make an informed decision.

OBJECTIVES OF DUE DILIGENCE

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

- Collection of material of information
- Identification of strength and threats and weaknesses.
- To improving the bargaining position.
- Identification of areas where representations and warranties are required.

Generally, The SWOT analysis of any business carried out as a part of due diligence to reveal the strengths and weaknesses of not only the financials but also intangibles. To perform effectively, the potential buyer needs to be clear about the goals and motives for acquiring the target company, as well as the value the buyer is attempting to create with the purchase. For example, if there is a legal risk, such as an outstanding lawsuit, that will not only jeopardize the financial stability of the company but also the loyalty of existing customers. This will erode the target company's market of customers by a new and stronger competitor. The target company's talent is the asset desired, and much of this depends on employee relations and accordingly cultural issues have to be addressed in time.

A thorough due diligence helps to reveal any of the negatives, but the process of due diligence rarely goes smoothly because of one major stumbling block and that is availability of information. The target company is rarely eager to reveal to the other party that it is up for sale and wants to keep this information confidential from its competitors, customers and employees. So getting any information from these sources can be tricky, depending upon what the potential buyer wants to gain from the transaction. The buyer who aims to get new market of customers with the transaction wants to make sure that the target company has a good relationship with existing customers. But, during due diligence, the target company does not want any contact with its existing customers for fear that customers might leave because of the impending sale. As another example, a potential buyer sees the employee talent as the company's main asset, but the target company is nervous about letting the potential buyer talk to key employees because it does not want to let them know that it is going to be sold. Because of the confidential nature of transactions, not all the information that is necessary to make a good decision can be revealed. This is why services of experts are hired in due diligence before beginning the process so the buyer receives reliable guidance. Further it is also critical to meet with trusted advisors - both inside and outside about what has been discovered and brainstorm the different scenarios of what can go wrong before going ahead with the deal.

Once a purchase price is agreed upon the prospective buyer usually enters into a conditional agreement with a due diligence clause with the target business, in which the buyer has a limited period to conduct due diligence. During this time, the potential buyer requests full access to all relevant materials in the target business, customer, vendor, financial and other information in order to conduct a thorough investigation. Here, it is to be ensured that the potential buyer does not use this information for its own benefit if it decides to back out of the deal, hence a confidentiality agreement is usually signed to protect the target businesses' interests. But a possibility of re-negotiation of the purchase price or cancellation of the agreement on the part of buyer is seen if the information found is not acceptable to the potential buyer. Again after due diligence, the goal is to either reaffirm the purchase price or renegotiate, depending on what was discovered under Due diligence. But the ultimate goal is to make a rational decision based on the facts.

The necessity of the due diligence can be summarized as under:

- To investigate in to the affairs of business as a prudent business person.
- To confirm all material facts related to the business.
- To access the risks and opportunities of a proposed transaction.
- To reduce the risk of post transaction.
- To confirm that the business is what as it appears.

- To create a trust between two unrelated parties.
- To identify potential deal killers defected in the target and avoid a bad business transaction.
- To gain information that will be useful for valuing assets.
- Representation & warranties for indemnification.
- Negotiation price concessions.
- To verify that the transaction complies with investment or acquisition criteria.
- To investigate & evaluate a business opportunity.
- To determine compliance with relevant laws and disclose any regulatory restrictions on the proposed transaction.
- To evaluate the condition of the physical plant and equipment; as well as other tangible and intangible assets.
- To ascertain the appropriate purchase price and the method of payment.
- To determine details that may be relevant to the drafting of the acquisition agreement.
- To discover liabilities or risks that may be deal-breakers.
- To analyze any potential antitrust issues that may prohibit the proposed M&A.
- To evaluate the legal and financial risks of the transaction.

SCOPE OF DUE DILIGENCE

Scope of due diligence is transaction based and is depending on the needs of the people who are involved in the potential investments, in addressing key uncovered issues, areas of concern/threat and in identifying additional opportunities.

Due diligence is generally understood by the legal, financial and business communities/potential investors to mean the disclosure and assimilation of public and proprietary information related to the assets and liabilities of the business being acquired. This information includes financial, human resources, tax, environmental, legal matters, intellectual property matters etc.

Due diligence would include thorough understanding of all the obligations of the target company: debts, rights and obligations, pending and potential lawsuits, leases, warranties, all high and impact laden contracts – both inter-corporate and intra-corporate.

The investigation or inspection would cover:

- Compliance with applicable laws
- Regulatory violations or disciplinary actions
- Litigation and assessment of feasibility of pursuing litigation
- Financial statements
- Assets – real and intellectual property, brand value etc.
- Unpaid tax liens and/or judgments
- Past business failures and consequential debt
- Exaggerated credentials/Fraudulent claims
- Misrepresentations or character issues

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

FACTORS TO BE KEPT IN MIND WHILE CONDUCTING DUE DILIGENCE

1. Objectives and purpose

A key step in any due diligence exercise is to develop an understanding of the purpose for the transaction. The goal of due diligence is to provide the party proposing the transaction with sufficient information to make a reasoned decision as to whether or not to complete the transaction as proposed. It should provide a basis for determining or validating the appropriate terms and price for the transaction incorporating consideration of the risks inherent in the proposed transaction.

The following factors may be kept in mind in this regard:

- Be clear about your expectations in terms of revenues, profits and the probability of the target company to provide you the same.
- Consider whether you have resources to make the business succeed and whether you are willing to put in all the hard work, which is required for any new venture.
- Consider whether the business gives you the opportunity to put your skills and experience to good use.
- Learn as much as you can about the industry you are interested in from media reports, journals and people in the industry.

2. Planning the schedule

Once it is decided for a particular business, make sure of the following things:

- Steps to be followed in due diligence process
- Areas to be checked
- Aspects to be checked in each area
- Information and other material to be requested from the seller

3. Negotiation for time

Sometimes, it may be the case that, sellers want the process to get over as soon as possible and try to hurry the proceedings. When the seller gives a short review period, negotiations can be made for adequate time to have a complete review on crucial financial and legal aspects.

4. Risk Minimisation

All the information should be double checked– financials, tax returns, patents, copyrights and customer base to ensure that the company does not face a lawsuit or criminal investigation. The financials are very important and one needs to be certain that the target company did not engage in creative accounting. The asset position and profitability of the company are vital.

Since, due diligence exercise deals with the overall business, it is important to consider aspects such as:

- background of promoters
- performance of senior management team
- organizational strategy

- business plans
- risk management system
- technological advancement
- infrastructure adequacy
- optimum utilization of available resources

5. Information from external sources

The company's customers and vendors can be quite informative. It may be found from them whether the target company falls in their most favored clients list. Any flaws that the audit uncovers help to re-negotiate down the sale price. Hence the Due diligence is "a chance to get a better deal".

6. Limit the report with only material facts

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

7. Structure of information

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

STAGES / PROCESS OF DUE DILIGENCE

A due diligence process can be divided into three stages i.e. (i) Pre diligence, (ii) Diligence, and (iii) Post Diligence.

(i) Pre diligence

A pre diligence is primarily the activity of management of paper, files and people.

1. Signing the Letter of Intent (LOI) and the Non-Disclosure Agreement (NDA)/ Engagement letter.
2. Receipt of documents from the company and review of the same with the checklist of documents already supplied to the company.
3. Identifying the issues.
4. Organising the papers required for a diligence.
5. Creating a data room.

The first and foremost step for the management of the target company, is that the investor is to sign a Letter of Intent (LOI) or a term sheet which underlines the various terms on which the proposed deal is going to be concluded. After the receipt of the LOI the investors sign an NDA with the various agencies who is going to conduct the due diligence, be it finance, accounting, legal or a secretarial diligence. The company would usually receive a checklist from the agency conducting the diligence. The checklist is invariably exhaustive in nature, and therefore, the company may either collate and compile the documents in-house, or outsource this to an external agency. While the data is being collated care should be taken to ensure that there are no loose ends that may probably arise.

As regards a data room, some of the important things that one should take cognizance of from the corporate view point are the following:

- (a) Do not delay deadlines (leads to suspicion).

- (b) Mark each module of the checklist provided for separately.
- (c) In case some issues are not applicable spell it out as “Not Applicable”.
- (d) In case some issues cannot be resolved immediately, admit it.
- (e) Put a single point contact to oversee the process of diligence.
- (f) Keep a register, to track people coming in and going out.
- (g) An overview on the placement of files.
- (h) Introduction to the point person.

During the diligence, care should be taken to adhere to certain hospitality issues, like:

- (a) Be warm and receptive to the professionals who are conducting diligence.
- (b) Enquire on the Due Diligence team.
- (c) In case of any corrections – admit and rectify.

As regards the process of diligence, as a professional care should be taken to scrutinize every document that is made available and ask for details and clarifications, since the Due diligence is an time bound activity and is need to be wrapped up at the earliest. However, the company may be provided an opportunity to clear the various issues that may arise out of the diligence.

(ii) Diligence

After the diligence, is conducted, the professionals submit a report, which in common parlance which is called as Due Diligence report. These reports can be of various kinds, a summary report; a detailed report or the like; and the findings mentioned in the report can be very significant, in as much as the deal is concerned.

There are certain terms used to define the outcome of these reports:

Deal Breakers: In this report the findings can be very glaring and may expose various non-compliance that may arise – any criminal proceedings or known liabilities.

Deal Diluters: The findings arising out a diligence may contain violations which may have an impact in the form of quantifiable penalties and in turn may result in diminishing the value of company.

Deal Cautioners: It covers those findings in a diligence which may not impact the financials, but there exist certain non-compliances which though rectifiable, require the investor to tread a cautious path.

Deal Makers: Which are very hard to come by and may not be a reality in the strict sense, are those reports wherein the diligence team have not been able to come across any violations, leading them to submit what is called a ‘clean report’.

It may be noted that only after the reporting formalities are over and various rectifications are carried out, the “shareholders agreement” (which is the most important document) is executed. This agreement contains certain standard clauses like the tag along and drag along rights; representations and warranties; condition precedents, and other clauses that have an impact on the deal.

(iii) Post Diligence

Post diligence sometimes result in rectification of non-compliances found during the course of due diligence. There can be interesting assignments arising out of the diligence made by the team of professionals. It can range from making applications/filing of petition for compounding of various offences or negotiating the shareholders’ agreement, since the investors will be on a strong wicket and may negotiate the price very hard.

TECHNIQUES OF DUE DILIGENCE AND RISK ASSESSMENT

Due diligence and risk assessment and control represent separate and distinct processes that take place prior to the commencement, and throughout the duration, of a commercial agreement respectively.

The Due diligence and risk assessment and control processes are central to good business practice. These processes are particularly important in the taking leadership in the market and charge premium rate services, where services are delivered to clients through Associates, which can, on occasion, include many different parties, the professional should prior to contracting with such party, write down the expectation from such party in the process of due diligence.

All parties in the Due diligence team to be confident that the established team is for good positive business and industry-wide growth. Such processes are built on the following four cornerstones:

Know your client – all businesses have risks, and these can vary significantly dependent on the nature of the company and the services being operated. It is important to know your client so you can properly identify the risks involved and assess how to manage them. This is not to limit or prevent commercial relationships forming, but to ensure they are properly managed whether an issue ultimately arises or not.

Properly identify the risks – this goes beyond listing risks, or simply identifying larger more obvious risks that may affect any commercial dealings. It involves proper consideration of the range and types of risks associated with particular clients and the services they provide, taking into account all the circumstances. This allows for effective management of the commercial relationship and careful preparation for handling of any problems that may arise.

Actions taken to control any risks – once risks are identified, industry members must make a proper assessment of the issues that would arise if incidents occur, and take proportionate steps to minimise the likelihood of such issues resulting in consumer harm. Steps taken need not involve significant resources in advance. Good process planning and/or staff training may have a positive impact on a company's ability to respond effectively when incidents do occur. Even matters that are perceived to be unlikely or appear minor can pose long term difficulties if businesses are under prepared to respond to matters that do arise.

The formulation of an action plan could be based on the following:

- To periodically test and/or monitor certain 'risks' that would normally be associated to a particular service category (e.g. for a subscription service, it may be prudent to test the clarity of promotions, whether reminder messages have been sent, with delivery confirmation noted, and that 'STOP' commands have been properly processed);
- The frequency of such testing should reflect the risk posed by both the client and the service type. For example, a client with no breach history, or where none of the directors are linked to other companies with breaches, and low- risk service types (such as football score updates), would require far less monitoring than a client with an extensive breach history that provides a high- risk category of service (e.g. a subscription-based lottery alerts system with a joining fee);
- 'Mystery shopper' testing could be used as, and when, appropriate;
- Internal mechanisms to enable 'whistle-blowing' by staff, where appropriate;
- Putting in place internal checks that correlate with unusual patterns of activity which may indicate consumer harm (e.g. spikes in traffic and/or consumer complaints made directly to the provider about one specific service);
- Having a procedure to alter and address instances of non-compliant behaviour;
- Monitoring of the client's service to ensure that any directions given by the Phone-paid Services Authority have been complied with;

- Producing a compliance file, comprising of a written record of the assessment, the subsequent action plan and evidence of any monitoring and/or testing required by the plan having taken place. This record does not necessarily need to be lengthy (although this will depend on the client and the actions taken under the plan), but should be made available to the Phone-paid Services Authority upon request.

Responding to incidents – even where a business makes significant effort to comply with regulations and legal requirements, they may not be immune to problems arising. Providers ought to be prepared to respond calmly and proactively to incidents, working closely with the regulator and other parties in the value chain to identify, mitigate and correct any fallout, providing support to consumers. Breaches ought to be identified and acknowledged quickly when they arise so that they can be remedied and services are therefore delivered to a high standard to consumers.

TYPES OF DUE DILIGENCE

In business transactions, the due diligence process varies for different types of companies. The relevant areas of concern may include the financial, legal, labour, tax, environment and market/commercial situation of the company. Other areas include intellectual property, real and personal property, insurance and liability coverage, debt instrument review, employee benefits and labour matters, immigration, and international transactions. The Business due diligence involves looking at quality of parties to a transaction, business prospects and quality of investment. The most important types of Due Diligence are:

OPERATIONAL DUE DILIGENCE

Operational due diligence aims at the assessment of the functional operations of the target company, connectivity between operations, technological up gradation in operational process, financial impact on operational efficiency etc. It also uncovers aspects on operational weakness, inadequacy of control mechanisms etc.

Operation due diligence involves verifying operational matters such as the various facilities, office layout, sitting capacity etc. The idea of doing this due diligence is to verify the various facilities owned by the target company and whether all costs are captured in the financials or not. It also gives a better picture of the kind of cost the buyer is going to incur in case they plan to go for expansion.

Further in operational due diligence the detail index of the fixed assets and its locations, age of the assets including all lease agreements relating to various equipment, schedule of sales and purchases of major capital equipment during previous years/ last three years, real estate deeds, mortgages, title policies and other permits also need to be verified in operation due diligence.

Strategic due diligence

Strategic due diligence tests the strategic rationale behind a proposed transaction and analyses whether the deal is commercially viable, whether the targeted value would be realized. It considers factors such as value creation opportunities, competitive position, and critical capabilities.

FINANCIAL DUE DILIGENCE

One of the most important types of due diligence as it seeks to check whether the financials showcased in the Information Memorandum is correct or not. It also provides a deep understanding of all the company's financials, including but not restricted to audited financial statements for last three years, recent unaudited financial statements with comparable statements of last year, review of accounting policies, review of internal audit procedures, quality and sustainability of earnings and cash flow, condition and value of assets, potential liabilities, tax implications of deal structures, examination of information systems to establish the reliability of financial information, internal control systems etc,

The Financial Due diligence also review the company's projection and basis of such projections, capital

expenditure plan, schedule of inventory, debtors and creditors, etc. Also, the process involves analysis of major top customer accounts, fixed and variable cost analysis, analysis on gross margins, customers with high profit margins and their contract period, internal control procedures, etc. It will also involve the type of the company's order book and sales pipeline to better build projections

Financial due diligence provides peace of mind to both corporate and financial buyers, by analysing and validating all the financial, commercial, operational and strategic assumptions being made.

The Financial Due Diligence can further extended to tax due diligence which covers the Diligence on various taxes the company is required to pay and which ensure that the proper calculation with no intention of under-reporting of taxes. Status of any tax related case running with the tax authorities. The tax due diligence comprises an analysis of:

- tax compliance
- tax contingencies and aggressive positions
- transfer pricing
- identification of risk areas
- tax planning and opportunities

Illustrative Scope of Work under Financial Due Diligence

The limited scope of coverage of the Company Analysis and Financial Due diligence Report would be:

- Study of the financial statements of the Company for the financial periods ("Historical Period").
- Review and comment on the reasonability and consistency of significant accounting policies adopted.
- Highlight significant matters in internal audit reports, audit committee reports and other audit reports.
- Analyse quality of earnings with particular focus on:
 - recurring versus non-recurring transactions (income and expenditure)
 - changes in accounting policies
 - impact of related party transactions, if any.
- Analyse the key drivers of revenue and margin growth with particular reference to:
 - price and volume changes of key products
 - geographical distribution
 - comments on the branch distribution network.
 - highlight significant issues in the lease rent agreement.
- Analysis of selling costs and marketing overheads.
- Analysis of interest cost and depreciation expense.
- Analysis of variances in significant administrative overheads.
- Analysis of movement in head count and employee costs during the reporting period.
- Highlight the movement of debtors over the past few years.
- Analysis of the cost sheet and comment on the movements in the costs over the Historical Period
- Analysis of historical trends in capex. Based on discussion with management, comment if there has been any deferred maintenance/replacement capex.

- Analysis of the basis of capitalisation and components of costs such as borrowing costs, pre-operative expenditure, exchange fluctuations, etc.
- Summarise details of investments held, highlighting investments in related entities, if any.
- Analysis of the trends in working capital during the reporting period.
- Analysis of and comment on the ageing profile of receivables and inventories. Inquire into provisioning policy and comment on provisions for uncollectible amounts and write-offs.
- Analysis of the basis of inventory valuation (physical verification of inventories will not be conducted).
- Comment on other current assets, loans and advances and major creditors. Comment on recoverability and provisioning for uncollectible amounts.
- Comment on the current liabilities including accounts payable and provisions/accruals.
- Obtaining bank reconciliations for key accounts and comment on reconciling items. Commitments, contingencies and litigation
- Highlight significant claims, pending or threatened litigations against the company at latest available period, after discussions with the management of the Company their views on the likely outcome of the cases/claims.
- Highlight significant guarantees, performance bonds, letters of comfort or similar documents of assurance and any indemnities provided by / or for the benefit of the Company, including details of such guarantees, etc. given by the company for the period under review.
- Status of tax claims and disputes thereof, if any.
- Related party transactions
- Highlight major related party transactions and comment on recoverability / payment of balance due from / to related parties at period end.
- Comment on key financial terms and conditions of such related party transactions after discussions with the Management.

TECHNICAL DUE DILIGENCE

Technical due diligence can be classified in to (i) intellectual property due diligence; and (ii) technology due diligence.

Intellectual Property Due Diligence

The company which owns Intellectual Property (IPs) use that IPs to monetize their business. These IPs are something that differentiates their product and service from their competitors. However the concept of valuation of intangible assets related to Intellectual Property like Patents, Copyrights, Design, Trademarks, Brands etc., also getting greater importance as these Intellectual Properties of the business are now often sold and purchased in the market by itself, like any other tangible asset. Many Indian companies and corporate entities do not give much importance to the portfolio management of their Intellectual Property Rights (IPR). The main objective of intellectual property due diligence is to ascertain the nature and scope of target company's right over the intellectual property, to evaluate the validity of the same and to ensure whether there is no infringement claims.

Few of the items that need to be seen while conducting due diligence is:

1. Schedule of patents and its application
2. Schedule of copyrights, trademarks and brand names

3. Pending patents clearance documents
4. Any pending claims case by or against the company in violation of intellectual property

Technology Due Diligence

Technology due diligence help organizations in the decision-making process when acquiring new technologies or lines of business, or when they need a simple evaluation of how their current technology is functioning. Technology due diligence considers aspects such as current level of technology, company's existing technology, further investments required etc. Technology is a key component of merger and acquisition activities; it's imperative to look at IT considerations.

In case of mergers, the goal of Technical Due Diligence (TDD) is to identify how well an acquisition target's organization and technology assets meet the acquisition goals; inform the valuation process (what the acquirer will pay for the company or assets); and identify risks due to intellectual property issues, capability gaps in the technology assets and/or organization, and/or ability to support the go-forward business goals including post-acquisition integration of organization and assets.

ENVIRONMENTAL DUE DILIGENCE

Environmental due diligence analyses environmental risks and liabilities associated with an organisation. This investigation is usually undertaken before a merger, acquisition, management buy-out, corporate restructure etc.

Environmental due diligence provides the acquirer with a detailed assessment of the historic, current and potential future environmental risks associated with the target organisation's sites and operations.

It involves risk identification and assessment with respect to:

- Review of the environmental setting and history of the site
- assessment of the site conditions
- operations and management of sites
- confirm legal compliance and pollution checks from regulatory authorities etc.

In regular course of business the environmental audits for each property leased by the company an important one, because if the company violates any major rule, local authorities can exercise their right to penalize and cancel its operational right. It is important for the management of the company to carefully review the following:

- List of environmental permits and licenses and validities of the same
- all correspondence and notices with EPA, state, or local regulatory agencies
- Whether the company's disposal methods of various by products are in sync with the regulated guidelines
- Whether there are any contingent environmental liabilities or continuing indemnification obligations.

HUMAN RESOURCE DUE DILIGENCE

Human Resource Due Diligence aims at people or related issues. Key managers and scarce talent leave unexpectedly. Valuable operating synergies get disturbed, when cultural differences between companies aren't understood or are simply ignored. It's crucial to consider cultural and employees issues upfront, for success of any venture.

Human Resource due diligence includes:

- Analysis of total employees, including current positions, vacancy, due for retirement and serving notice period.

- Analysis of current salaries, bonuses paid during last three years, and years of service.
- All employment contracts with nondisclosure, non-solicitation and non-competition agreements between the company and its employees. In case there are a few irregularities regarding the general contracts, focus must be given.
- HR policies regarding annual leave, sick leave and other forms of leave.
- Analysis of employee problems for alleged wrongful termination, harassment, discrimination and any legal case pending about the same.
- In case there are labor disputes, requests for arbitration, or grievance procedures currently pending, its financial impact needs to be seen.
- A list and description of all employee health benefits and welfare insurance policies or self-funded arrangements.
- Employee Benefit Schemes and schedule of grants of such scheme.

LABOUR LAWS DUE DILIGENCE

The purpose of a labour due diligence is to conduct a comprehensive review. The compliance from a labour law perspective in order to identify gaps before an authority audit any non-compliances relating to the inappropriate application of labour law regulations and to allow company to correct errors and deficiencies. The labour law due diligence is identify gaps and minimize labour law and payroll deficiencies before any regulatory action.

However, the Labour Law due diligence is important in case of the merger and acquisitions, takeovers, IPOs, joint ventures and winding up / liquidation of the companies. The scope of the labour law due diligence extend to the all labour & employment related central, state and local laws, rules and regulations applicable to the company.

During the payroll and labour due diligence the auditor should examine and review the following areas:

- Labour law regulations and agreements;
- Employment contracts, amendments to employment contracts;
- Information, job descriptions;
- Legal declarations/agreements regarding termination of employment;
- Maintenance of records
- Verification of compliance by contractor engaged by the company
- Observing liability as principal employer.

INFORMATION SECURITY DUE DILIGENCE

Information security due diligence is often undertaken during the information technology procurement process to ensure that risks are uncovered. However the regular review internal information security system helps to identifying security gaps, as well as ensure that the company is acting with an acceptable standard of care elevate existing information security management system. The information security due diligence covers the following:

- Information Security Measure
- Data Protection/ sharing policy
- Network and System design

- Wireless and Remote Access facility
- Incident management and data recovery

LEGAL DUE DILIGENCE

A legal due diligence covers the legal aspects of a business transaction, liabilities of the target company, potential legal pitfalls and other related issues. Legal due diligence covers intra-corporate and inter corporate transactions.

It includes preparation of regulatory checklists meeting with personnel, independent check with regulatory authorities etc. apart from the verification of following document.

- Copy of Memorandum and Articles of Association
- Minutes of Board Meeting for the last three years
- Minutes of all meetings or actions of shareholders
- Copy of share certificates issued to Key Management Personnel
- Copy of all guarantees to which company is a party
- All material contracts
- Copies of all loan agreements, bank financing agreements, line of credit to which company is a party
- Status of the order, awards issued by the various regulators and courts.
- Status of Pending litigations
- Competition Law due diligence

DUE DILIGENCE OF COMPETITION LAW

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

Primary components of Competition Law due diligence are:

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

Due diligence of competition law may be made under the following heads:

1. Due diligence of various agreements (both existing and proposed)
2. Due diligence on dominance and its likely abuse if any, (existing)
3. Due diligence on combinations (i.e. effect of proposed mergers & Acquisition)

1. Due Diligence of various agreements includes:
 - Agreements relating to production, supply and distribution of goods or services.
 - Agreement if any with competitor relating to production, marketing or bidding, price etc.
 - Agreements with customers and distributors.
 - Purchase agreements.
 - Non-compete covenants.
 - Technology transfer/technical know-how agreements.
 - Concession agreements
2. Due diligence on abuse of dominance if any includes:
 - Examination as to the existence of dominance
 - Examination of relevant market, whether product or geographical Areas.
 - Cases of abuse if any.

3. Due diligence on regulation of combinations:

The following aspects are to be analysed during due diligence process:

- Nature of combination.
- Acquisition of share, voting rights, assets or control or merger/amalgamation etc.
- Examination of total value of Assets or Turnover and the valuation methodology.
- Status of merger notification to be filed with CCI.
- Status of dominance after merger.

ETHICAL DUE DILIGENCE

Ethical Due Diligence measures ethical character of the company and identify, the possibilities of ethical risks, which is a non-financial risk. It may relate to reputation, governance, ethical values etc. It helps an organization to decide whether the partner is ethically viable. This is an effective reputation management tool for any type of business decisions.

Ethical due diligence of management of a company involves assessing in terms of their fit with the ethical culture and values of the organization. Ethical performance assessment is also used as one of the parameter of the career development and promotion within the organization.

DUE DILIGENCE FOR MERGER & AMALGAMATION

In case of the mergers and amalgamation of the companies, due diligence is a critical process which cannot be overlooked by the management as well as by the shareholders of the company while giving consent for the amalgamation. Due diligence in mergers not only requires the assessment of the financial, legal, and regulatory exposures, but also requires insights into the target company's structure, operations, culture, human resources, supplier and customer relationships, competitive positioning, and future outlook. The due diligence provide an assurance in taking decisions considering the factors which may be a potential deal-killers/shapers and provide assurances that the acquisition is the right decision at the right price. Due diligence also provides management an insights, holistic view of the target company that which helps in the easy integration of the target's people and business.

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

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

Due Diligence Process in the M&A Strategy

Stages	For Buyer	For Seller
Preparation Stage	<ul style="list-style-type: none"> • M&A strategy formulation • Preparation of list of potential Targets • Appoint external advisor for evaluation of targets • Short list targets • Create due diligence team 	<ul style="list-style-type: none"> • Structure a business plan • Preparation of list of potential buyers • Appoint external advisor • Shortlist buyers
Pre diligence	<ul style="list-style-type: none"> • Approach targets • Negotiation of initial terms • Execute non-disclosure agreement • Compilation of list of data required 	<ul style="list-style-type: none"> • Approach buyers • Negotiate initial terms • Execution of non disclosure agreement • Creation of data room
Due diligence	<ul style="list-style-type: none"> • Inspection of data room • Analysis of private documents • Evaluation of risk and return • Structure the terms and conditions 	<ul style="list-style-type: none"> • Assistance in data room • Setting deadlines for offer
Negotiations	<ul style="list-style-type: none"> • Make final offer • Negotiate and agree on terms 	<ul style="list-style-type: none"> • Compile final offers • Select best offer • Negotiations
Post diligence	<ul style="list-style-type: none"> • Post merger integration and cultural adjustments 	<ul style="list-style-type: none"> • Termination of data room and ownership exchange

PREPARATION OF SCHEME OF AMALGAMATION

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

1. Definitions of transferor and transferee as well as the definition of the undertaking of the transferor company.

2. Authorised, issued and subscribed capital of transferor and transferee companies.
3. Basis of scheme should be explained briefly on the recommendation of valuation report, covering transfer of assets/liabilities, specified date, reduction or consolidation of capital, application to financial institutions as lead institution for permission, etc.
4. Change of name, object and accounting year.
5. Protection of employment.
6. Dividend position and prospects.
7. Management structure, indicating the number of directors of the transferee company and the transferor company.
8. Applications under Sections 230 and 232 of the Companies Act, 2013 to obtain approval from the Tribunal.
9. Expenses of amalgamation.
10. Conditions of the scheme to become effective and operative and the effective date of amalgamation.

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

A. Information Required by the Professional Generally

Cross holding of the Directors of the Transferee and Transferor Companies.

1. Relationship between the directors of the transferee and transferor companies under the Companies Act, 2013.
2. Names of the officers of both the transferee and transferor companies who are to be authorised to sign the Application, Affidavit and Petition. (The companies concerned can authorise any one person to act on behalf of them, who may be from either of the companies).
3. Names of the English and regional language newspapers in which notices are to be published.
4. Names in preferential order as to the chairmen of the meetings of the transferee and transferor companies. (The chairman in this case need not be a director on the board of directors of the company concerned or even a member of the company).
5. List of creditors and their dues. List of individual cases to be given, as well as categorisation in various slabs.

B. Information/Documents that may be required by the Regional Director, Ministry of Corporate Affairs, in connection with Amalgamation.

1. Balance sheets for last five years of the transferee company.
2. Balance sheets for last five years of the transferor company.
3. Two copies of the valuation report of the valuers.
4. List of top shareholders of the transferee company.
5. List of top shareholders of the transferor company.
6. List of directors of the transferor company and their other directorships.

7. List of directors of the transferee company and their other directorships.
8. Number and percentage of NRI and foreign holding in the transferee and transferor companies.
9. Rights/Bonus/Debentures Issues made by the transferee and the transferor companies in the last five years.

C. The Following Information is required to be furnished to the Auditors Appointed by the Official Liquidator.

From the transferor company

1. Certified true copy of the scheme of amalgamation along with the petition.
2. Certified true copy of the Memorandum and Articles of Association of the company.
3. List of shareholders of the company with their shareholding. Any changes during the last five years to be indicated.
4. Accounts of the company made upto the appointed day of amalgamation.
5. Address of the registered office of the company.
6. Present authorised and paid-up share capital of the company.
7. Changes in the Board of directors during the last five years along with list of present Board of directors.
8. List of associated concern in which directors are interested.
9. List of various appeals pending under Income tax, GST, Custom Duty, FEMA, etc.
10. Details of loans and advances given to the associated concern/companies under the same management during the last five years.
11. Details of revaluation of assets.
12. Details of any allegations and/or complaints against the company.
13. Details of amount paid to the managing director, directors or any relative of the directors during the last five years.
14. Comparative statement of profit and loss account and balance sheet for the last five years.
15. Details of bad debts written off during the last five years.
16. List of all charges registered with the Registrar of Companies and the amount secured against the same.
17. Copy of the latest annual return filed with the Registrar of Companies along with Annexures.
18. Details of all the subsidiary companies as under:
 - (a) Authorised and paid-up share capital of the company.
 - (b) List of present shareholders along with details of changes in the shareholding patterns during the last five years.

The following information of the transferee company is required by the auditor:

- Names of the existing directors of the company.
- List of common shareholders of the companies involved in the amalgamation with individual shareholding.
- Authorised and paid up capital of the company.

- Copy of latest audited balance sheet.

The auditors may also require the following records of the transferor company for examination:

- Books of accounts and relevant records for the last five years.
- Minutes book of Board and General Meetings.

DUE DILIGENCE FOR TAKE OVERS

For any business, doing takeover of a business company is not an easy task. Moreover, it is an important financial investment that implies a number of risks, some of which can run the entire process aground. Which make the takeover due diligence as one of the prerequisite for takeover of a business.

The Takeover Due diligence is generally conducted in different domains; Financial, Legal, Taxation, social life, environment, etc. The Takeover Due diligence covers the history of the company, past performance, the present, and the future of a company. In effect, it must respond to certain requirements of the buyer, i.e., maximize financial or non-financial benefits, and negotiate the risks of failure. Therefore, takeover due diligence is useful in allowing the buyer to confirm his or her decision of the sale, or in negotiating the conditions of the sale.

The takeover due diligence is having a great importance for a business as it synthetically express the overall value of the target enterprise. According to which the buyer will be able to analyze the potential of the target company while understanding the risks related in taking it over.

Thus, taking over a company brings inevitable risk, some of which can cause great detriment to the company. Due diligence allows the company to avoid a tragic end after being taken over. This being said, the acquisition audit is a complex process. Because of this, it is necessary to find people experienced in due diligence, so that the audit acquisition will be effective and useful.

The takeover due diligence allow the buyer to better discern the risks and opportunities linked to the target company. This due diligence will be performed once an agreement is signed or after the letter of intent. It will allow verification of the elements being negotiated between the parties, producing an accurate reflection of the current state of the target company.

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 the Listing Agreements with various stock exchanges 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.

The following Compliances are required to be checked under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

1. Whether any acquisition/transfer has triggered open offer?
2. Ensure that a merchant banker of Category I has been appointed who is not an associate of or group of acquirer or the target company.
3. Ensure that an escrow account has been opened with the required deposit.
4. The consideration payable under the open offer shall be calculated at the offer price, assuming full acceptance of the open offer, and in the event the open offer is subject to differential pricing, shall be computed at the highest offer price, irrespective of manner of payment of the consideration. [Computed

as per sub regulation (2) of regulation 16]

5. A letter duly authorizing target company to realize the value of escrow account as specified in these regulations.
6. An undertaking from the target company that none of the Acquirer/Persons Acting in Concert have been prohibited by SEBI from dealing in securities, in terms of direction issued under Section 11B of SEBI Act.
7. An undertaking from the sellers, promoters, directors of the target company that they have not been prohibited by SEBI from dealing in securities, in terms if direction issued under section 11B of SEBI Act.
8. An undertaking from the target company that it has complied with the provisions of Listing Agreement, and that any non-compliance or delayed compliance has been brought to the notice of Target Company.
9. An undertaking from the target company that it has complied with the provisions of these regulations, and that any non-compliance or delayed compliance has been brought to the notice of Target Company.
10. A public announcement of an open offer to the shareholder of the target company has been given and detailed public statement has been published as per the prescribed timeline in case of Acquirer acquires the shares or voting rights of the target company in excess of the limits prescribed under Regulation 3 and 4 of these regulations.
11. The public announcement has been sent to all the stock exchanges on which the shares of the target company are listed, to SEBI and to the target company at its registered office within one working day of the date of the public announcement. The time within which the public announcement is required to be made to the Stock Exchanges under different circumstances is tabulated below. It is to be checked that following compliances have been made by the company.
12. A detailed public statement has been published by the acquirer through the Manager to the Open Offer within maximum 5 working days from the date of public announcement as provided in regulation 13(4).
13. In case of indirect acquisition where none of condition specified in regulation 5(2) are satisfied, the detailed public statement has been published not later than five working days of the completion of the primary acquisition of shares or voting rights in or control over the company or entity holding shares or voting rights in, or control over the target company.
14. The compliances relating to publication of public announcement and detailed public statement by the acquirer has been complied under regulation 14.
15. The public announcement contains the information as provided in regulation 15.
16. The acquirer through the manager to the offer has filed a draft letter of offer along with the fee as prescribed in regulation 16, with SEBI for its observations within 5 working days of publication of Detailed Public Statement.
17. The offer price is not less than the price as calculated under regulation 8 for frequently or infrequently traded shares.
18. The minimum of 26% of voting capital of the company is being offered subject to minimum public holding requirements.
19. The acquirer has made complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange or transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer, within ten working days of the expiry of the tendering period.
20. The unclaimed balances, if any, lying to the credit of the special escrow account at the end of seven years from the date of deposit thereof, has been transferred to the Investor Protection and Education

Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

21. Ensure that:
 - (a) any person, who along with PACs crosses the threshold limit of 5% of shares or voting rights, has disclosed his aggregate shareholding and voting rights to the Target Company at its registered office and to every Stock Exchange where the shares of the Target Company are listed within 2 working days of acquisition or the disposal as per the format specified by SEBI. (Regulation 29(1) read with Regulation 29(3))
 - (b) any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, has disclosed the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified. (Regulation 29(2) read with Regulation 29(3))
22. Continual disclosures of aggregate shareholding has been made within 7 days of financial year ending on March 31 to the target company at its registered office and every stock exchange where the shares of the Target Company are listed by:
 - (a) Shareholders (along with PACs, if any) holding shares or voting rights entitling them to exercise 25% or more of the voting rights in the target company.
 - (b) Promoter (along with PACs, if any) of the target company irrespective of their percentage of holding.
23. The promoter (along with PACs) of the target company has disclosed details of shares encumbered by them or any invocation or release of encumbrance of shares held by them to the target company at its registered office and every stock exchange where shares of the target company are listed, within 7 working days of such event.

Checklist for Acquirer

Preliminary Examination of a Target Company:

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

It may be noted that this list is not an exhaustive checklist and it varies depends on size of the company nature of industry

- (a) Information has to be collected on Target Company and to be analysed on financial and legal angle.
- (b) Register of members to be examined to verify the profile of the shareholders.
- (c) Title of the target company with respect to immovable properties may be verified.
- (d) Financial statements of Target Company have to be examined.
- (e) Examination of Articles and Memorandum of Association of the Company.
- (f) Examination of charges created by the Company
- (g) Applicability of FEMA provisions if any relating to FDI has to be looked into.
- (h) Import and Export of technology if any

- (i) Business prospects etc.

A merchant Banker of Category I have to be appointed. It has to be ensured that the merchant banker is not an associate of or group of acquirer or the target company

Escrow Account:

- (1) (i) An escrow account has to be opened and the following sum has to be deposited.
- (ii) The escrow amount shall be calculated in the following manner, as specified in regulation 17,—

For consideration payable under the public offer,—

On the first 500 crores - 25 per cent; of the consideration

On the balance consideration - An additional amount equal to 10% of balance consideration.

If, an open offer is made conditional upon minimum level of acceptance, hundred percent of the consideration payable in respect of minimum level of acceptance or fifty per cent of the consideration payable under the open offer, whichever is higher, shall be deposited in cash in the escrow account.

(2) The consideration payable under the open offer shall be computed as provided for in sub-regulation (2) of regulation 16 and in the event of an upward revision of the offer price or of the offer size, the value of the escrow amount shall be computed on the revised consideration calculated at such revised offer price, and the additional amount shall be brought into the escrow account prior to effecting such revision.

(3) The escrow account referred to in sub-regulation (1) may be in the form of,—

- (a) cash deposited with any scheduled commercial bank;
- (b) bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or
- (c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin:

Provided that securities sought to be provided towards escrow account under clause (c) shall be required to conform to the requirements set out in sub-regulation (2) of regulation 9.

Regulation 9(2) specifies the following requirements.

- (a) such class of shares are listed on a stock exchange and frequently traded at the time of the public announcement;
- (b) such class of shares have been listed for a period of at least two years preceding the date of the public announcement;
- (c) the issuer of such class of shares has redressed at least ninety five per cent. of the complaints received from investors by the end of the calendar quarter immediately preceding the calendar month in which the public announcement is made;
- (d) the issuer of such class of shares has been in material compliance with the listing Regulations for a period of at least two years immediately preceding the date of the public announcement:

Provided that in case where the Board is of the view that a company has not been materially compliant with the provisions of the listing Regulations, the offer price shall be paid in cash only;

- (e) the impact of auditors' qualifications, if any, on the audited accounts of the issuer of such shares for three immediately preceding financial years does not exceed five per cent. of the net profit or loss after tax of such issuer for the respective years; and

- (f) the Board has not issued any direction against the issuer of such shares not to access the capital market or to issue fresh shares.

(4) In the event of the escrow account being created by way of a bank guarantee or by deposit of securities, the acquirer shall also ensure that at least one per cent of the total consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.

(5) For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account, in accordance with requirements under these regulations.

(6) For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the manager to the open offer and shall be kept valid throughout the offer period and for an additional period of thirty days after completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer.

(7) For such part of the escrow account as is in the form of securities, the acquirer shall empower the manager to the open offer to realise the value of such escrow account by sale or otherwise, and in the event there is any shortfall in the amount required to be maintained in the escrow account, the manager to the open offer shall be liable to make good such shortfall.

(8) The manager to the open offer shall not release the escrow account until the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, save and except for transfer of funds to the special escrow account as required under regulation 21.

(9) In the event of non-fulfillment of obligations under these regulations by the acquirer the Board may direct the manager to the open offer to forfeit the escrow account or any amounts lying in the special escrow account, either in full or in part.

(10) The escrow account deposited with the bank in cash shall be released only in the following manner,—

- (a) the entire amount to the acquirer upon withdrawal of offer in terms of regulation 23 as certified by the manager to the open offer:

Provided that in the event the withdrawal is pursuant to clause (c) of sub-regulation (1) of regulation 23, the manager to the open offer shall release the escrow account upon receipt of confirmation of such release from the Board;

- (b) for transfer of an amount not exceeding ninety per cent of the escrow account, to the special escrow account in accordance with regulation 21;
- (c) to the acquirer, the balance of the escrow account after transfer of cash to the special escrow account, on the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, as certified by the manager to the open offer;
- (d) the entire amount to the acquirer upon the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, upon certification by the manager to the open offer, where the open offer is for exchange of shares or other secured instruments;
- (e) the entire amount to the manager to the open offer, in the event of forfeiture for non-fulfillment of any of the obligations under these regulations, for distribution in the following manner, after deduction of expenses, if any, of registered market intermediaries associated with the open offer,—
 - (i) one third of the escrow account to the target company;

- (ii) one third of the escrow account to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009; and
- (iii) one third of the escrow account to be distributed pro-rata among the shareholders who have accepted the open offer. Undertakings/Authorisation:

Ensure to obtain following undertakings/authorization:

1. A letter duly authorizing Target Company to realize the value of escrow account in terms of Takeover Regulations.
2. An undertaking to Target Company that none of the Acquirer/Persons Acting in Concert have been prohibited by SEBI from dealing in securities, in terms of direction issued under Section 11B of SEBI Act.
3. An undertaking from the sellers, promoters, directors of the Target Company that they have not been prohibited by SEBI from dealing in securities, in terms if direction issued under Section 11B of SEBI Act.
4. An undertaking from the Target Company that it has complied with the provisions of Listing Agreement, and that any non-compliance or delayed compliance has been brought to the notice of Target Company.

DUE DILIGENCE FOR ISSUE OF SECURITIES

A public company may issue securities to public through prospectus - Public offer by complying with the provisions of Part I of chapter III – Prospectus and Allotment of Securities; or through private placement by complying with the provisions of Part II of chapter III – Prospectus and Allotment of Securities; or Through a rights issue or a bonus issue in accordance with the provisions of the Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder, the key regulation governing the issue of securities and preparation of financial information are

- The SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009/2018
- The SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015.

The SEBI ICDR Regulations provide the guidelines relating to conditions for various kind of issue including public and right issue, the ICDR regulations provide detailed provisions:

1. relating to public issue such as conditions an Initial Public offer (IPO) and Further public Offer(FPO) conditions
2. relating to pricing in public offering, conditions governing promoters contribution, restriction on transferability of promoters contribution, minimum offer to public, reservations, manner of disclosures in offer documents etc.

The SEBI (LODR) Regulations, 2015 lay down the broad principles for periodic disclosure to be given by the listed entities operating in different segments of capital markets.

A private company may issue securities by way of rights issue or bonus issue in accordance with the provisions of the Act; or through private placement by complying with the provisions of Part II of chapter III – Prospectus and Allotment of Securities & Chapter IV -Share Capital & Debentures of Companies Act, 2013.

The scope and comprehensiveness of the Issue of Securities due diligence is important not only from a legal standpoint to avoid liability but also from a reputational perspective as the reputation of the company and its promoters and other participants may be significantly vanished, if on a later date it appears that the company and other participants are failed to uncover and disclose to prospective investors critical issues relating to the issuer or the Securities.

While the specific requirements in connection with issue of securities are different under the Companies Act, 2013 and SEBI Laws & Regulations made thereunder, any non-compliance in these regulations are generally impose liability if the offering memorandum or prospectus contains a materially incorrect or misleading statement or omits a material fact, However in certain conditions the complete issue of securities stand cancelled. The violation of any applicable liability provisions may result in liability for offering participants, in particular the issuer and the underwriters. These liability provisions emphasize the need for careful preparation of all materials to be used in issue of securities offerings, in particular the offering memorandum or prospectus.

DUE DILIGENCE REPORT FOR BANK

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

The Practising Company Secretary (PCS) is required to certify compliance in respect of matters specified in the RBI Notification as already stated in the prescribed format which has been subsequently revised and streamlined by RBI.

Format of Diligence Report (ANNEXURE 3 TO THE NOTIFICATION)

To

The Manager,

_____ (Name of the Bank)

I/We have examined the registers, records, books and papers of Limited having its registered office at..... as required to be maintained under the Companies Act, 1956 / 2013 (the Act) and the rules(As contained in RBI Notification No. DBOD. No. BP.BC. 110/08.12.001/2008-09 dated February 10, 2009 read with RBI Notification No. UBD.PCB.No. 49/13.05.000/2008-09 dated February 12, 2009) made thereunder, the provisions contained in the Memorandum and Articles of Association of the Company, the provisions of various statutes, wherever applicable, as well as the provisions contained in the Listing Agreement/s, if any, entered into by the Company with the recognized stock exchange/s for the half year ended on..... .

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

1. The management of the Company is carried out by the Board of Directors comprising of as listed in Annexure, and the Board was duly constituted. During the period under review the following changes that took place in the Board of Directors of the Company are listed in the Annexure, and such changes were carried out in due compliance with the provisions of the Companies Act, 1956. (Now Companies Act 2013)

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

3. The company has altered the following provisions of

- (i) The Memorandum of Association during the period under review and has complied with the provisions of the Companies Act, 1956 (Now Companies Act, 2013) for this purpose.

- (ii) The Articles of Association during the period under review and has complied with the provisions of the Companies Act, 1956 (Now Companies Act, 2013) for this purpose.

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

5. The company has advanced loans, given guarantees and provided securities amounting to ` to its directors and/or persons or firms or companies in which directors were interested, and has complied with Section 295 of the Companies Act, 1956. (Now to be in compliance with Section 185 of Companies Act, 2013).

6. The Company has made loans and investments; or given guarantees or provided securities to other business entities as detailed in Annexure.... and has complied with the provisions of the Companies Act, 1956. (Now to be in compliance with Section 186 of Companies Act, 2013).

7. The amount borrowed by the Company from its directors, members, financial institutions, banks and others were within the borrowing limits of the Company. Such borrowings were made by the Company in compliance with applicable laws. The break up of the Company's domestic borrowings were as detailed in Annexure (Now to be in compliance with Section 180 of Companies Act, 2013).

8. The Company has not defaulted in the repayment of public deposits, unsecured loans, debentures, facilities granted by banks, financial institutions and non-banking financial companies. (Section 73- 76 of Companies Act 2013)

9. The Company has created, modified or satisfied charges on the assets of the company as detailed in Annexure.... Investments in wholly owned Subsidiaries and/or Joint Ventures abroad made by the company are as detailed in Annexure (Now to be in compliance with Section 77-87 of Companies Act, 2013).

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

11. The Company has issued and allotted the securities to the persons-entitled thereto and has also issued letters, coupons, warrants and certificates thereof as applicable to the concerned persons and also redeemed its preference shares/debentures and bought back its shares within the stipulated time in compliance with the provisions of the Companies Act, 1956 (now to be in compliance with relevant sections of Companies Act, 2013) and other relevant statutes.

12. The Company has insured all its secured assets. (Now to be in compliance with relevant provisions of Chapter IV of Companies Act, 2013.)

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

14. The Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956. (Now to be in compliance with relevant sections of Chapter VIII of Companies Act, 2013).

15. The Company has insured fully all its assets.

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

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

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

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

20. The Company has complied with the provisions stipulated in Section 372A of the Companies Act in respect of its Inter Corporate loans and investments. (Now to be in compliance with Section 186 of Companies Act, 2013).

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

22. The Company has credited and paid to the Investor Education and Protection Fund within the stipulated time, all the unpaid dividends and other amounts required to be so credited.

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

24. The Company has (being a listed entity) complied with the provisions of the Listing Agreement (Now to be in compliance with the SEBI (LODR) Regulations, 2015).

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

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

Place:

Signature:

Date:

Name of Company Secretary/Firm:

C.P. No.:

GUIDANCE ON DILIGENCE REPORTING

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

Period of Reporting

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

Secretary in Whole-Time Practice

Section 2(25) of the Companies Act, 2013 defines "Company Secretary in practice" as a secretary who is deemed to be in practice under sub-section (2) of Section 2 of the Company Secretaries Act, 1980. Thus, a member of the Institute of Company Secretaries of India, who is not in full-time employment, can become a Secretary in whole-time practice (hereinafter referred to as PCS) after obtaining from the Council of the Institute a Certificate of Practice under Section 6 of the Company Secretaries Act, 1980 and the regulations thereunder.

Right to Access Records and Methodology for Diligence Reporting

To enable the PCS to issue the Diligence Report, the Company (borrower) should provide the PCS access at all times to the books, papers, minutes books, forms and returns filed under various statutes, documents and records of the company, whether kept in pursuance of the applicable laws or otherwise and whether kept at the registered office of the company or elsewhere which he considers essential for the purposes of Diligence Reporting. The PCS shall be entitled to require from the officers or agents of the company such information and explanations as he or she may think necessary for the purpose of such Reporting. However, depending on the

facts and circumstances, he/she may obtain a letter of representation from the company in respect of matters where verification by PCS may not be practicable, for example matters like —

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

Reporting with Qualification

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

If the PCS is unable to form any opinion with regard to any specific matter, the PCS shall state clearly the fact that he is unable to form an opinion with regard to that matter and the reasons thereof. If the scope of work required to be performed is restricted on account of limitations imposed by the company or on account of circumstantial limitations (like certain books or papers being in custody of another person or Government Authority), the Report shall indicate such limitation.

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

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

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

Professional Responsibility and Penalty for False Diligence Report

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

Any failure or lapse on the part of a Practising Company Secretary (PCS) in issuing a Diligence Report may not only attract penalty for false Reporting and disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980 but also make him liable for any injury caused to any person due to his/her negligence in issuing the Diligence Report. Therefore, it becomes imperative for the PCS that he/she exercises great care and caution while issuing the Diligence Report and also adheres to the highest standards of professional ethics and excellence in providing his/her services. While preparing the Diligence Report the PCS should ensure that no field in the report is left blank. If there is nothing to be reported or the field is not applicable to the company, then the PCS should write ‘none’ or ‘nil’ or ‘not applicable’ as the case may be.

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

Communication to earlier incumbent:

As per the provisions of clauses (8) and (11) of Part I of the First Schedule to the Company Secretaries Act, 1980, whenever a new incumbent is assigned the Diligence Report work, he should first communicate his appointment to the earlier incumbent in writing by registered post. Where, however, in the same year a Company Secretary in whole-time practice is appointed in place of another Company Secretary in whole time

practice, who was appointed initially, the new incumbent should not only first communicate the same to the previous incumbent in writing by Registered Post but also first seek his consent (preferably in writing).

FEMA DUE DILIGENCE

Foreign Exchange Management Act (FEMA) is the legislation which governs the foreign currency in India. The main aim of FEMA is to facilitate external trade, balance the payments, promote the orderly development, and maintain the foreign exchange market in India. Doing Compliance for cross border transactions in India is a big challenge for most of the companies covered in the FEMA. Further, an increased flow of funds, inbound as well as outbound has increased the level of check on compliances in context of foreign exchange. This requires companies to keep a regular eye on foreign exchange transactions, in context of sectoral caps, investment caps, to circumvent from the huge penalties. The FEMA Due diligence helps to avoid damaging circumstances and is helpful in ensuring compliance of Foreign Exchange laws. The FEMA Due diligence covers all types of cross border transactions – import, export, debt funding, equity capital infusion, transfer of shares etc.

The following are covered under the FEMA Due diligence:

- Capital Accounts transactions
- Current account transaction
- Currency Transactions
- Regulations, Master Directions and Circulars issued by RBI
- FDI Policy, approvals
- Setting up of Business through Liaison office, Branch office, project office, wholly owned subsidiaries, joint ventures, foreign institutional investors, and foreign venture capital investor, Non-Resident of India/ person of Indian origin.

FCRA DUE DILIGENCE

The Foreign Currency (Regulations) Act, 2010, the FCRA Rules, 2011, and FCRA Amendment Rules, 2015 were respectively enacted to regulate the inflow of foreign funds received by NGOs. The FCRA, 2010 replaces the erstwhile Foreign Contribution (Regulation) Act of 1976.

The FCRA legislation state that an organization cannot receive funding from a foreign source, unless it is registered under the Foreign Currency (Regulations) Act, 2010 or has obtained special government approval for a specific project. Also the registered NGOs need to comply with various post-registration requirements, as detailed in the provisions of the Act and its rules of enforcement.

NGOs in India are categorized under three legal categories: society, trust, and a limited company. These may be founded for a specific cultural, economic, educational, religious, or social purpose. These organizations are heavily regulated by respective state and government agencies.

However, at the state level, an NGO can be registered as any of the following:

- Society under the Registrar of Societies;
- Public trust through the execution of a trust deed; or,
- Limited company under Section 8 of the Companies Act, 2013.

The Income Tax Department (IT Department) and Ministry of Home Affairs regulate registration, and require all NGOs to file annual tax returns and submit audited account statements to their respective agencies. All types of NGOs are treated equally under the Income Tax Act of 1961.

In order to be eligible for tax exemption status, an NGO must be founded for a charitable purpose. As defined

in India law, 'charitable purposes' include relief for the poor, education, medical relief, and the advancement of any other object of general public utility. Once this status is established, charitable organizations can apply for an 80G certificate to enable donors to claim tax rebates against their donations.

Scope of the Act

The FCRA and its enforcement rules regulate "foreign contributions" received from "foreign sources", whereby such 'sources' are entities established in a foreign territory. The Act categorically defines 'foreign contributions' as a donation, delivery, or transfer made by a foreign source of: Any article (unless offered for individual personal use), the value of which must not exceed US\$387 (Rs 25,000); Currency – foreign or Indian; or, Foreign securities, including all foreign debentures, bonds, shares, stocks, and other instruments of credit (income or interest generated from these sources are also treated as foreign contribution under the FCRA).

Registration and Prior Approval

Once approved by the Ministry of Home Affairs (MHA), NGOs are legally entitled to accept foreign funds under the FCRA. To obtain this eligibility, NGOs can either opt for special permission or go for a long-term registration that is valid for a period of five years. In the case of the former, MHA approval must always be sought prior to receiving contributions. In the case of the latter, NGOs only have to apply for renewal six months prior to the ending of the registration period.

Foreign Funding

NGOs have to open and maintain bank accounts, which will exclusively deal with the receipt and utilization of foreign contributions, as required under FCRA rules. A separate set of accounts and records must be maintained, exclusively for these transactions.

The FCRA also mandates that foreign contributions must be utilized only for the purpose for which they were received. Under Section 7 of the FCRA, the transfer of contributions is not allowed.

A person or entity is prohibited from transferring contributions to any other person, unless such transferee is authorized by the government to receive foreign contributions.

Due Diligence & Reporting Requirements

The most important reporting requirement under the FCRA is the submission of annual returns. All NGOs are required to submit their annual returns to the federal government within nine months from the closure of the previous financial year. This return has to include all the details of the contributions received, namely:

- Source and manner in which it is received;
- Purpose for which it was received; and,
- Manner of usage of the contributions.

It is necessary of the entities who receive foreign funding should review the updated FCRA norms and meet their compliance obligations meticulously to avoid any regulatory actions. As once an entity appears under the government scanner for non-compliance, such organizations may face all manner of restrictions and regulatory obstacles.

NON DISCLOSURE AGREEMENT (NDA)

NDAs are common in business, as it provide a safe guard to protect trade secrets and other confidential information which are meant to be kept under wraps. Information commonly protected by NDAs might include research & development activities, innovations for a new product, client information, sales and marketing plans, or a unique manufacturing process. The nondisclosure agreement ensure that the business secrets will stay

underground, and in case of any failure, the company is eligible to have legal recourse and to sue for damages.

The agreement explicitly spell out that the person receiving the information need to keep the same as secret and have limited use for the purpose it has been provided by the company. This means it will be considered as breach of agreement, when it encourages others to breach it, or allow others to access the confidential information through improper or unconventional methods.

a nondisclosure agreement is defined as a legally enforceable contract that creates a confidential relationship between a person who holds some kind of trade secret and a person to whom the secret will be disclosed.

The Confidentiality agreements typically serve three key functions:

- To protect sensitive information. By signing an NDA, participants promise to not divulge or release information shared with them by the other people involved. If the information is leaked, the injured person can claim breach of contract.
- In the case of new product or concept development, a confidentiality agreement can help the inventor keep patent rights. In many cases, public disclosure of a new invention can void patent rights. A properly drafted NDA can help the original creator hold onto the rights to a product or idea.
- Confidentiality agreements and NDAs expressly outline what information is private and what's fair game. In many cases, the agreement serves as a document that classifies exclusive and confidential information.

Content of the Non-Disclosure Agreements

1. Definitions and exclusions of confidential information;

Definitions of confidential information spell out the categories or types of information covered by the agreement. This specific element serves to establish the rules-or subject/consideration-of the contract without actually releasing the precise information.

2. *Obligations from all involved people or parties; and time periods.*

At the same time, nondisclosure agreements often exclude some information from protection. Exclusions might comprise information already considered common knowledge or data collected before the agreement was signed.

Additionally, Time periods are also commonly addressed in NDAs and usually require that the party receiving the information stays mum for a number of years. This specific information is usually up for negotiation.

Sample Non-Disclosure agreement is placed below:

XYZ Limited

Non-Disclosure Agreement

This Agreement is entered into effective as of _____ between _____. (the "Company") and _____, ("Recipient"). Recipient is acting as an expert advising the Company in connection with a [_____], and for that purpose the Company may make certain Confidential Information (as defined below) available to the Recipient (the "Purpose").

As a condition to, and in consideration of, the Company's furnishing of Confidential Information to the Recipient, the Recipient agrees to the restrictions and undertakings contained in this Agreement.

IT IS HEREBY AGREED AS FOLLOWS.

1. Definitions

In this Agreement:

1.1 Confidential Information':

- (a) means any information disclosed by one Party (the "Disclosing Party") to any other Party (the "Receiving Party") or which is otherwise communicated to or comes to the attention of the Receiving Party whether such information is in writing, oral or in any other form or media and whether such disclosure, communication or coming to the attention of the Receiving Party occurs prior to or during this Agreement; and
- (b) includes without limit:
 - (i) any information which can be obtained by examination, testing or analysis of any hardware, any component part thereof, software or material samples provided by the Disclosing Party under the terms of this Agreement;
 - (ii) all information disclosed by one Party to any of the other Parties relating directly or indirectly to the Purpose;
 - (iii) the fact that the Parties are interested in or assessing the Purpose and/or are discussing the Purpose with each other; and
 - (iv) the terms of any agreement reached by the Parties or proposed by any of the Parties (whether or not agreed) in connection with the Purpose ;
 - (v) all knowledge, information or materials (whether provided in hardcopy or electronic or other form or media) whether of a technical or financial nature or otherwise relating in any manner to the business affairs of the Disclosing Party (or any parent, subsidiary or associated company of that party) software, samples, devices, demonstrations, know-how or other materials of whatever description, whether subject to or protected by copyright, patent, trademark, registered or unregistered design.

2. Undertakings

Subject to clause 3 below and in consideration of the disclosure of Confidential Information by the Disclosing Party, the Receiving Party agrees:-

- (i) to keep confidential and not disclose to any third party, copy, reproduce, adapt, divulge, publish or circulate any part of or the whole of any Confidential Information without the prior written consent of the Disclosing Party; and
- (ii) to restrict access to the Confidential Information disclosed to it under this Agreement to those of its employees and officers who need to know the same strictly for the Purpose; and
- (iii) not to use Confidential Information disclosed to it under this Agreement for any purpose other than the Purpose; and
- (iv) not to combine any part of or the whole of the Confidential Information with any other information; and
- (v) not to disclose the whole or any part of the Confidential Information to any third party without (a) the prior written consent of the Disclosing Party and (b) prior to disclosure to such third party procuring that the third party is bound by obligations which are no less onerous than those contained in this Agreement; and
- (vi) to procure that each employee and officer to whom Confidential Information is disclosed under this Agreement is, prior to such disclosure, informed of the terms of this Agreement and agrees to be bound by them; and

- (vii) to procure that the Confidential Information in its possession is stored securely and that physical access to it is controlled.

3. Exceptions

3.1 The protections and restrictions in this Agreement as to the use and disclosure of Confidential Information shall not apply to any information which the Receiving Party can show:-

- (a) is, at the time of disclosure hereunder, already published or otherwise publicly available; or
- (b) is, after disclosure hereunder published or becomes available to the public other than by breach of this Agreement; or
- (c) is rightfully in the Receiving Party's possession with rights to use and disclose, prior to receipt from the Disclosing Party; or
- (d) is rightfully disclosed to the Receiving Party by a third party with rights to use and disclose; or
- (e) is independently developed by or for the Receiving Party without reference or access to Confidential Information disclosed hereunder.

3.2 The Receiving Party shall not be in breach of Clause 2 if it can demonstrate that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory or judicial obligation.

4. No title of Use

Nothing contained in this Agreement shall be construed as conferring upon the Receiving Party any right of use in or title to Confidential Information received by it from the Disclosing Party, other than as expressly provided herein:-

- (i)
- (ii)

5. No Obligation to Disclose, No Representations

Nothing in this Agreement shall be construed as—

- (i) creating an obligation on any of the Parties to disclose particular information; or
- (ii) creating an obligation on the parties to negotiate; or
- (iii) as a representation as to the accuracy, completeness, quality or reliability of the information.

6. Term & Termination

- 6.1 Subject to clause 3, the obligations contained in clause 2 shall continue to apply for so long as the Receiving Party has in its possession or has procured that any third party authorized under this Agreement has in its possession any Confidential Information.
- 6.2 The Receiving Party shall, on the request of the Disclosing Party, return to the Disclosing Party (whose property they shall remain) all documents and things containing Confidential Information, together with all relevant samples and models which it has in its possession pursuant to this Agreement.

7. Miscellaneous

- 7.1 No Party shall assign its rights and/or obligations pursuant to this Agreement without the prior written consent of the other Party.
- 7.2 No failure or delay by either party in exercising any rights, power or legal remedy available to it hereunder shall operate as a waiver thereof.

- 7.3 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the Agreement shall be carried out as nearly as possible according to its original terms and intent.
- 7.4 This Agreement shall be construed and governed in all respects in accordance with the laws of India and the Parties hereby submit to the jurisdiction of the Indian courts.
- 7.5 The signing of this Agreement shall not be construed as the forming of an agency, joint venture, employment or partnership.

Signed for and on behalf

“XYZ Limited”

By its duly authorized representative

(Signature)_____

(Name)_____

(Title/position)_____

(Date)

Signed for and on behalf

“ABC Limited”

By its duly authorized representative

(Signature)_____

(Name)_____

(Title/position)_____

(Date)

LESSON ROUND UP

- The objective of due diligence is to Collection of material of information, Identification of strength and threats and weaknesses, to improving the bargaining position, Identification of areas where representations and warranties are required.
- A due diligence process can be divided into three stages i.e. (i) Pre diligence, (ii) Diligence, and (iii) Post Diligence.
- Operational due diligence aims at the assessment of the functional operations of the target company, connectivity between operations, technological up gradation in operational process, financial impact on operational efficiency etc.
- Due diligence and risk assessment and control represent separate and distinct processes that take place prior to the commencement, and throughout the duration, of a commercial agreement respectively.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. What are the stages of M&A due diligence?
2. Prepare a check list for M&A due diligence.
3. What is the process involved in takeover.
4. Draft the confidentiality clause of the non-disclosure agreement.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Lesson 20

Due Diligence – II

LESSON OUTLINE

- Introduction
- Non Compliances under Companies Act, 2013
- Prosecution procedures
- Compliant by Registrar and Serious Fraud Investigation Office
- Compounding
- Non Compliances under SEBI Act, 1992
- Penalties and Adjudication at SEBI
- Non compliances under LODR Regulations
- Contravention and Compounding under FEMA
- Section wise Offence/ Default under Companies Act, 2013
- LESSON ROUND-UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Corporate compliance involves adhering to various rules, regulations, laws, and standards which are designed to protect business, employees, and all others stake holders involved in the organization. The impact of the non-compliance of such rules Regulations on a business could be in the form of monetary fines, disqualification of Directors, prohibition of doing business, Regulatory enforcement, Court cases or even extended to the closure of the business entity.

In the recent years the instances of the non-compliances have been continuously increased and the business owners are getting impatient as these consequences would affect their eligibility and effect the business in many ways.

This chapter will provide a broader perspective to how the various compliance failure result in to the Corporate Failure and the results thereof on the company and its officers.

INTRODUCTION

Corporate compliance involves adhering/following to a wide range of rules, regulations, laws and standards which are designed to protect business, employees, stakeholders and others stakeholders involved in the organization. For any business, adhering to the laws and standards, and monitoring the compliance of the business processes has evolved as a major concern for the business owners. Monitoring not only refers to continuously observing possible compliance violations but also includes predicting possible compliance violations in the future. Since the concept of business process compliance is vast, thus approaches related to process monitoring are hard to identify. Monitoring the compliance of business processes with relevant regulations, constraints, and rules during runtime has evolved as a major concern in practice.

The cost of non-compliance and monetary fines have been continuously increasing in the past few years. However, business owners are getting impatient as these consequences would affect the organization in many ways. Increased complexity, enforced business changes, and individuals being held personally accountable are all set to continue because of continuous compliance failures.

The penalties for non-compliance for corporate governance depends upon the nature of violation and the document violated. It is not uncommon for a professional to mistakenly violate any legal requirement and governance norms. In certain situation the applicable laws are discovered to be in conflict with one another. In these cases, the compliance which is more complex or harsh need to be complied by the company and its officers. Further, non-compliances which include the public money and have social interest are considered as more serious violations, such as Public Deposits or abusing a position of power, can result in penalties ranging from Closure, suspension to expulsion from stock exchanges. In extreme cases, such abuses can result in civil or criminal prosecution.

PROSECUTORIAL PROCEDURES

Generally, the every Law, Rule and Regulations has defined procedures for fulfilling the compliance requirement and the such compliance requirement also have a prescribed method of resolving any conflicts or accusations of wrongdoing which includes for investigation as well as for prosecution by the regulator and compounding of the offence by the company. Especially when it comes to different regulators, the different companies have different compliance requirement and manner for dealing with violations.

NON COMPLIANCES UNDER THE COMPANIES ACT, 2013

The Ministry of Corporate Affairs (MCA) administers the Companies Act, 2013 (hereinafter called the 'act') with its Headquarter at New Delhi and is executing its prose through the office of Regional Director ("RD"), Registrar of Companies ("ROCs"), Official Liquidators ("OL") and Serious Fraud Investigation Office ("SFIO").

The complaints are being filed by the MCA for offences under the "Act", on account of various violations, which are detected through filing under the Act with ROCs, scrutiny of such documents, public complaints including complaints from inspection or stakeholders' investigation carried out under the act. Taking into accounting these violations, the act contemplates the creation of Special Courts to try such complaints so that these offences are dealt in a separate Court for quick disposition of the case.

Under the Companies Act, 2013 Offences can be classified in the following manner:

- (i) **Depending on the type of punishment:** Punishment includes fine, penalty and imprisonment. The law may impose either of these or a combination of these as an alternative or an addition. As such, there are following types of offences:
 - Offences punishable with imprisonment only.
 - Offences punishable with fine only.

- Offences punishable with fine or imprisonment.
- Offences punishable with fine or imprisonment or both.
- Offences punishable with fine and imprisonment.
- Offences punishable with penalty only.

Such Offences can be broadly categorised into 3 categories:

- (i) Those punishable mandatorily with imprisonment,
 - (ii) Those where imprisonment might be ordered, and
 - (iii) Where there is no scope of imprisonment.
- (ii) **Depending on Cognizability:** Whether a person can be arrested with or without a warrant will depend on whether the offence is 'cognizable' or 'non-cognizable', as defined under Cr. PC:
- Cognizable Offences are offences for which a police officer may, in accordance with law, arrest without warrant.
 - Non-cognizable Offences are offences for which a police officer has no authority to arrest without warrant.
- (iii) **Depending on Bail ability:** This covers the offences which are Bail able or which require the Judicial Custody.

PROCESS OF PROSECUTION UNDER THE COMPANIES ACT, 2013

Generally, at the time of scrutinizing the Balance Sheet and Other Financial/Non-Financial Statements of the Company, if Registrar of Companies come across any lapses on part of the Company in recording the transactions and irregularities etc. and observed provisions of Companies Act 1956/2013 has been violated by the Company and Officers in preparation of these Statements, the Registrar of Companies issues show cause notice to the company / officers in default. On such Show cause notice being issued to the company, it is the responsibility of the Company to make sure all details sought by the Registrar of Companies "ROC" is properly provided to the satisfaction of the Registrar of Companies. If Registrar of Companies is convinced with the explanation given by the company and upon getting proper documents and back papers, he may drop the proceedings.

In case, the company is not in a position to prove its genuineness in providing the details sought for by the Registrar of Companies, then the Registrar of Companies will serve show cause notice to the directors as officers in default and company stating that why action shall not be taken by the Registrar of Companies against the company for the lapse in compliance as observed by Registrar of Companies. In such case the company have an option of either satisfying the Registrar of Companies by providing required documents and details sought for or if it is not in a position to prove that the company genuinely recorded the financial transactions and maintain books of accounts in compliance with the provisions of the Act, approach National Company Law Tribunal ("NCLT") to compound the offences committed by the company accepting that there are lapses on part of the Company as well as directors in complying the provisions of the Act.

In case, the company is failed to compound the offences with National Company Law Tribunal ("NCLT"), then the Registrar of Companies will proceed further to file a complaint against the company and its directors with the authority having jurisdiction to try the said offences after obtaining permission from the Ministry.

As per provision of Section 441 (1) of the Act, 2013, Any offence punishable under this Act, whether committed by a company or any officer thereof not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by

- (a) the Tribunal; or
- (b) where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees, by the Regional Director or any officer authorised by the Central Government

Further, as per amended provision of section 441(6) of the Companies Act, 2013, any offence which is punishable with imprisonment only or with imprisonment and also with fine is not compoundable.

Before the above amendment, any offence which is punishable under Companies Act, 2013 with imprisonment or fine, or offence punishable with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court in accordance with the procedure laid down in the Act for compounding of offences.

However, the committee constituted by the Government to review the offences under the Companies Act, 2013 in its report recommended that the clause (a) of sub section (6) of section 441 should be omitted on the fact that the requirement of the permission of the Special Court for compounding of offence is a redundant provision in the light of the NCLAT judgment dated 29.08.2017 in *Cinepolis India Pvt. Ltd. v. Roc*, CA(AT) No. 137 of 2017, While relying on the interpretation of section 621A of the CA, 1956 (Corresponding to section 441 of the Companies Act, 2013) by the Supreme Court in *VLS Finance V. Union of India*, held that a prior approval of the Special Court before compounding of offence by the NCLT is not required.

Provision of Section 435 of the Act, 2013 provide that the Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

A Special Court shall consist of a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more, and in case of other offences, a Metropolitan Magistrate or a Judicial Magistrate of the First Class.

The judge of the special court is appointment by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

Any offence either before or after the institution of any prosecution, be compounded by the National Company Law Tribunal; or where the maximum amount of fine which may be imposed for such offence does not exceed twenty five lakh rupees, by the Regional Director or any officer authorized by the Central Government. The sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

Section 439 of the Companies Act, 2013 provides that notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under the Companies Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

Section 212(6) provides that the offence covered under section 447 shall be cognizable and the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by the Director, Serious Fraud Investigation Office; or any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

No court shall take cognizance of any offence, which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder or a member of the company, or of a person authorised by the Central Government in that behalf. However, the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.

DEALING WITH COMPLAINT BY ROC AND SFIO IN SPECIAL COURT

The registrar of companies and the SFIO are empowered to file complaint before a magistrate if they are of an opinion that a particular company has been in default according to Companies Act, 2013 or is pursuing its

activities violating the law of the land. They can file a complaint under section 190 of the Criminal Procedure Code, 1973. But the difference lies in how the complaint is treated.

The SFIO has been empowered under the section 212 of the Companies Act to file a complaint. The complaint of SFIO is treated as police report under section 173 of the Criminal Procedure Code, 1973. Whereas, the complaint filed by the Registrar of Companies is not considered as a police report but a private complaint under section 190 of the Criminal Procedure Code, 1973. The complaint by the registrar of companies has to pass through the hurdle of pre-trial evidence on the same platform as that of the complaint of SFIO.

When a complaint is received by the Magistrate, the power to take cognizance on the basis of such complaint is under Section 190 of Criminal Procedure Code, 1973. However, further action on such complaint has to be taken under Sections 200-204 of Criminal Procedure Code, 1973.

Under Section 200 Criminal Procedure Code, 1973, the magistrate has to record the statement of the complainant on oath, and also of other witnesses, if any. As the large number of complaints are filed by private individuals, many of which may be frivolous complaints. Therefore, it is considered necessary to verify the details of such complaints by examining the complainant on oath under Section 200 of Criminal Procedure Code, 1973. In certain “complaint” cases, action may have to be taken by the magistrate under the provisions of Section 202 Criminal Procedure Code, 1973, i.e., an inquiry by the magistrate himself or an investigation by police, etc. After these steps, if the magistrate does not find sufficient ground or finds no prima facie case to proceed further, he may dismiss the complaint under Section 203 of Criminal Procedure Code, 1973; on the other hand, if he finds sufficient ground to proceed, he may issue process under Section 204 of Criminal Procedure Code, 1973.

The complaint filed by SFIO does not have to pass through the process of section 200 to 203 as mentioned above. After a complaint has been filed by the SFIO it is treated as police report and it directly proceeds to the section 204 and the next stage of trial that is issuing of summons or warrants. Whereas the complaint filed by the Registrar of Complaints has to pass through the procedure mentioned under section 200 to 203 which causes a delay in the prosecution initiated by the registrar of companies.

Difference between Fine and Penalty

The Companies Act, 2013 contains provisions for adjudication of penalties by officers of the Central Government. Fine and penalty, though may sound similar, but are different. Fine can be imposed only by a Court of law, but penalty may be imposed even by an administrative office(r). Therefore, imposition of fine requires prosecution in a Court of law, whereas penalty may be imposed by way of adjudication.

COMPOUNDING

As per the Black’s Law Dictionary, to “Compound” means “to settle a matter by a money payment, in lieu of other liability.” This definition thoughtfully represents the concept of Compounding as a *Settlement Mechanism*, a settlement by paying the penalty in lieu of facing the prosecution for the offence committed. The meaning of word compounding of offence is not defined under Companies Act, 2013, or any other previous company law. However, if the provisions allowing compounding of offences under the company law are analyzed, it provide clear inference that *it is nothing but admission of guilt*” In the process of compounding, the person may either *Suo-moto* or on receipt of notice of default / initiation of prosecution, admits the commission of default and make an application for compounding of the concern offence. The defaulters agree to pay penalty/fine which may be ordered by the Central Government or Tribunal. Compounding is essentially a compromise or arrangement between administrator of the enactment and person committing an offence. Compounding crime consists of receipt of some consideration (termed as compounding fees) in return for an agreement not to prosecute one who has committed an offence.

Prosecution can be avoided by ‘compounding the offence’, either before or after the institution of the prosecution. “To compound” means “to settle a matter by a money payment, in lieu of other liability”. In short, compounding of

an offence is a settlement mechanism, by which one is given an option to pay money in lieu of his prosecution, thereby avoiding a prolonged litigation.

COMPOUNDING OF CERTAIN OFFENCES UNDER COMPANIES ACT, 2013

Compoundable offence

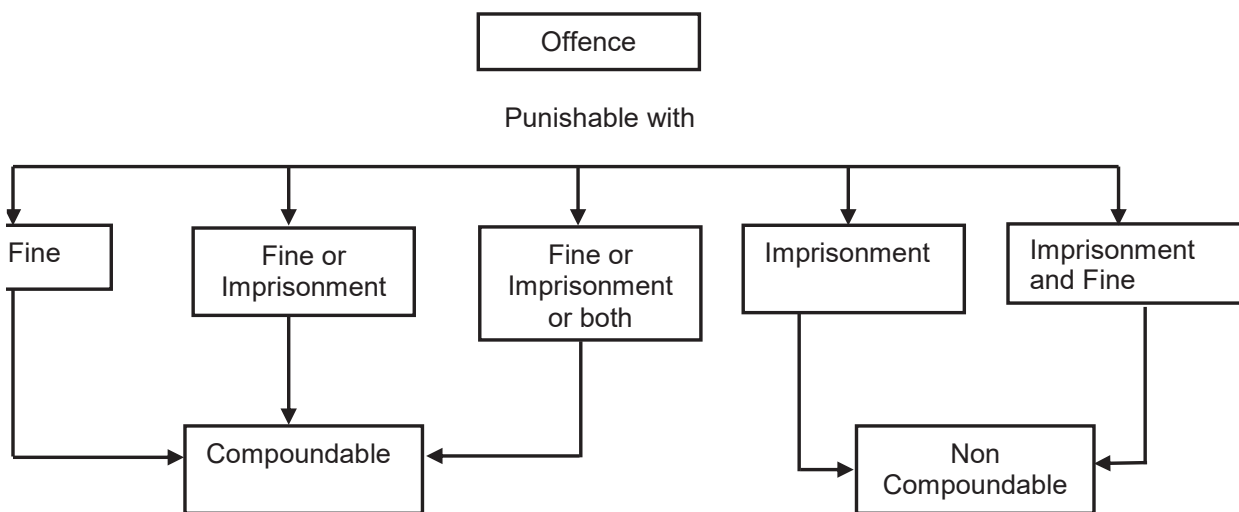
The offences that are not mandatorily punishable with imprisonment are compoundable, as enlisted below:

- Offences punishable with fine only.
- Offences punishable with fine or imprisonment.
- Offences punishable with fine or imprisonment or both.
- In such types of offences the punishment may or may not include imprisonment.

Non-compoundable Offence

Offences punishable with imprisonment mandatorily are non-compoundable offences. Therefore, the following offences are non-compoundable:

- Offences punishable with imprisonment only
- Offences punishable with both imprisonment and fine
- Any offence for which action is taken under Section 447, i.e., fraud, is non-compoundable, as the punishment therefor is fine and imprisonment



COMPOUNDABLE AND NON-COMPOUNDABLE OFFENCES

EFFECTS OF COMPOUNDING

- If the offence is compounded before the institution of prosecution, the prosecution cannot be launched against the person by the Registrar or by any shareholder of the company or by any person authorised by the Central Government in relation to the offence which has been compounded.
- If the offence is compounded after the institution of prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending. Then the person shall be discharged.

ENFORCEMENT MECHANISM OF SEBI

In terms of its mandate to protect the interest of investors and to regulate the securities market, SEBI is empowered to initiate the following types of proceedings:

A. Civil quasi-judicial proceedings: SEBI is empowered to initiate three types of civil quasi-judicial actions under governing legislations:

- (i) Adjudication proceedings under Chapter VIA of the SEBI Act and the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (and under the analogous provisions of the SCRA and Depositories Act and Rules issued thereunder) may result in imposition of maximum monetary penalty of Rupees 25 crore or upto 3 times the profit, whichever is higher.
- (ii) Enquiry Proceedings under Chapter V of SEBI (Intermediaries) Regulations, 2008 may inter alia result in suspension/ cancellation of certificate of registration of the registered Intermediary.
- (iii) Proceedings before the Board: The power of issuing directions including under Section 11, 11B, 11D of the SEBI Act (and under the analogous provisions of the SCRA and Depositories Act) has been delegated to the WTM. After making or causing to be made an enquiry, if the Board is satisfied that it is necessary to take any measures, the WTM may issue such directions as deemed appropriate.

B. Prosecution (Criminal Proceedings): Apart from civil proceedings, SEBI may also choose to initiate criminal proceedings by way of filing a criminal complaint under Section 24 of SEBI Act (and under the analogous provisions of the SCRA and Depositories Act) before the SEBI Special Court, which may result in imprisonment upto 10 years or/and fine upto 25 crore. These proceedings being criminal proceedings, the procedural laws such as the Evidence Act, 1872 and the Code of Criminal Procedure, 1973 are also applicable.

C. Settlement/Compounding: Prior to the initiation or during the pendency of any civil/criminal proceedings or pending an appeal pursuant to such proceedings, an entity may choose to settle / compound the pending proceedings, as per the agreed terms and conditions provided in the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and Internal Circular No. ED/LAD/Cir:-1/2016. Such settlement/compounding proceedings are very significant from the perspective of enforcement, since they provide for expeditious disposal of cases saving resources of the regulator with similar benefits to the applicants, while taking into account the public interest. Section 24A of the SEBI Act, Section 23N of the SCRA and Section 22A of the Depositories Act permit composition of offences.

In terms thereof appropriate administrative or civil actions viz. proceedings under sections 11, 11B, 11D, 12(3) and 15I of SEBI Act and equivalent proceedings under the SCRA and the Depositories Act, 1996 and other civil matters pending before SAT and courts could be settled between SEBI and a person (party) who may prima facie be found to have violated the securities laws or against whom administrative or civil action was commenced for such violation. Compounding of offences cover appropriate prosecution cases filed by SEBI before the criminal courts

D. Recovery: When a person fails to pay the penalty imposed by the adjudicating officer, or fails to comply with any direction of SEBI for refund of monies or fails to comply with a direction of disgorgement order or fails to pay any fees due to SEBI, in order to recover such amounts, SEBI is empowered to initiate recovery proceedings under Section 28A of SEBI Act, 1992 r/w Section 226 and the Second Schedule of Income Tax Act, 1961 (and under the analogous provisions of the SCRA and Depositories Act).

Consent Order under SEBI Laws:

Consent orders provide flexibility of a wider array of enforcement actions which will achieve the twin goals of an appropriate sanction and deterrence without resorting to long drawn litigation before SEBI, SAT, and Courts. Passing of consent orders also reduce regulatory costs and save time and efforts in pursuing enforcement actions. This effort could more effectively be used for pursuing cases which require the full process of

enforcement action and for policy initiatives. Accordingly, the Board issued Circular No. EFD/ED/Cir-1/2007 on 20.04.2007 and guidelines under the SEBI Act, SCRA and Depositories Act, for, -

- i. Consent Orders; and
- ii. considering requests for composition of offences,

The salient features of the modified Circular, included the following:

- A. Certain defaults including insider trading, front running, failure to make an open offer, redress investor grievances and respond to summons issued by SEBI, and defaults falling in the category of fraudulent and unfair trade practices which in the opinion of SEBI are very serious and/or have caused substantial losses to the investors were generally excluded from the consent process.
- B. No consent application was to be considered, if any violation was committed within a period of two years from the date of any consent order. However, if the applicant had already obtained more than two consent orders, no consent application was to be considered for a period of three years from the date of the last order.
- C. No consent application was to be entertained by SEBI before the completion of investigation / inspection, if any.
- D. In respect of proceedings pending before SEBI, no consent application was to be considered if filed after 60 days from the date of the service of the show cause notice. However, this condition was not applicable in case of proceedings pending before the Tribunal/Courts.
- E. The consent terms were to be determined in terms of the guidelines (annexed with the above referred circular), which inter alia, provided for the following objective parameters for determining the consent terms:
 - a. A minimum Benchmark Amount for each category of default attributable to the default/violation for which the show cause notice issued or to be issued.
 - b. The Benchmark Amount to take into consideration the penalty imposed by the AO and the order passed by the WTM as the case may be
 - c. Additional amounts for previous defaults/track record of the applicant.
 - d. Weightage given to the stage of the proceeding, nature of the default/violation, gravity of the default/violation, volume traded, price impact, networth, profits made, nature of disclosure not made, its impact, etc.
- F. The consent terms also included other directives such as disgorgement of ill-gotten profits, etc., if considered necessary.
- G. The HPAC/ Panel of WTMs considering the facts and circumstances of the case and the gravity of the charges, were empowered to
 - a. enhance the settlement amount in serious cases as per the scheme of the SEBI Act, or
 - b. reduce the settlement amount if the settlement amount is disproportionately higher considering the nature of violation, or
 - c. refuse to consider the case under the consent process.
- H. The HPAC consisted of a Chairman (a retired judge of a High Court) and three other external experts.
- I. Internal Committee/s, comprised of a Chief General Manager not administratively associated with the case and Division Chiefs of the concerned Operational Department and Enforcement Department respectively to assist the HPAC.

- J. In case of rejection of the consent application, no subsequent application with respect to the same default was to be considered by SEBI at any stage thereafter.
- K. SEBI was to dispose of the consent application expeditiously preferably within a period of six months from the date of registration of the consent application.

Highlights of SEBI (Settlement Proceedings) Regulations, 2018

SEBI constituted a High Level Committee under the Chairmanship of Retd. Justice A. R. Dave (Supreme Court of India) to examine the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and comprehensively re-work the regulations after taking into account developments in domestic and foreign jurisdictions. The SEBI (Settlement Proceedings) Regulations, 2018 provide a more effective mechanism, the essential concomitants of a legal proceeding, without compromising on deterrence or providing equitable remedies to the affected investors.

SEBI has introduced the SEBI (Settlement Proceedings) Regulations, 2018 that have been notified on 30.11.2018 and will come into effect from 01.01.2019. On the date of commencement of these Regulations the existing SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 has been repealed.

In pursuit of the objectives of SEBI (to protect the interests of investors in securities and to promote the development of and to regulate the securities market), as new challenges arise it is important to have a convergence or integration of the quasi-judicial processes within SEBI with the alternate dispute resolution process, to bring forth a more effective harmonized scheme to operate without any conflict and delay. The SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 introduced a mathematical and transparent system of calculating the settlement amount. However over a period of time it was noticed that there was a need for revision due to changes in securities laws, new products and increase in settlement amounts.

The followings are the key changes in the settlement Regulations through SEBI (Settlement Proceedings) Regulations, 2018

Definition of “Securities law” and “Specified Proceedings”: As per the definitions “Securities Law” and “Specified Proceedings” prescribed under Old Settlement Regulations, settlement of offences was limited to the SEBI Act, the SCRA, the Depositories Act and the rules and regulations made thereunder.

Post the inclusion of “the relevant provisions of the any other law to the extent it is administered by the Board” in the definitions of “Securities Law” and “Specified Proceedings” under New Settlement Regulations, SEBI is now empowered to settle matters w.r.t. provisions pertaining to any other law which are administered by SEBI including specific provisions of Companies Act, 2013.

Limitation period for filing a Settlement Application: Under the New Settlement Regulations, SEBI revised the limitation period to ensure that only genuine applications are filed and the settlement process is not adopted as a means of forum shopping and to delay civil and administrative proceedings. The limitation period prescribed under New Settlement Regulations is as follows:

The Applicant shall file the settlement application within 60 days from the date service of SCN or Supplementary SCN, whichever is later.

SEBI may accept the application after the expiry of period of 60 days as specified above if it is satisfied that there were genuine reasons for not filing the same.

If the Settlement application is filed after 60 calendar days from the expiry of 60 days period as specified above i.e. 120 days from the service of SCN/Supplementary SCN; subject to the approval of SEBI, the settlement amount so determined will get increased by 25%.

No delayed application will be accepted by SEBI beyond the period of 180 days from the service of SCN/ supplementary SCN or after the first hearing whichever is earlier.

Settlement applications in case of repetitive defaults: SEBI, under the New Settlement Regulations, removed the provision prohibiting an applicant from filing a settlement application for an alleged default if such alleged default was committed within a period of twenty-four months from the date of the last settlement order w.r.t. different cause of action. However, the Settlement application shall not be considered under the following circumstances:

If an earlier application had been rejected for the same alleged default;

If there is any pending audit or investigation or inspection or inquiry in respect of any cause of action, except in case of applications involving confidentiality

If there are any monies due under an order issued under securities laws which are liable for recovery.

Increasing the Scope of Settlement: Under the Old Settlement Regulations, SEBI specifically prohibited the Settlement for the defaults involving the following:

- Insider Trading and serious cases of fraudulent and unfair practices including front running provided if the applicant made good the losses due to the investors, his application may be considered;
- failure to make open offer;
- Defaults or manipulative practices by mutual funds, AIFs, CIS etc.
- failure to redress investor grievances;
- Non-compliance of notices and summons issued by Board or the AO, cases involving refund of monies to investors.

SEBI felt that the broad list of defaults which cannot be settled can be made principle based to settle the case purely depending upon the facts and circumstances of each case. Therefore, under the new regime all defaults can be settled including the defaults pertaining to PIT and PFUTP; except the alleged defaults which in the opinion of SEBI – have market wide impact, cause loss to a large number of investors, or affect the integrity of the market.

Settlement applied by fugitive economic offender, willful defaulter etc. may not be settled: Under the New Settlement Regulations, SEBI has the power to not settle the matter if the Applicant of such Settlement Application is:

- A willful defaulter
- A fugitive Economic offender or;
- Any such person who has defaulted in payment of any fees due or penalty imposed under securities laws.

The terms “willful defaulter” and “fugitive economic offender” are not defined under SEBI Acts and Regulations. Therefore, the definition of “Willful defaulter” shall be taken from RBI master circular DBR.No.CID.BC.22/20.16.003/2015-16 and the definition of “fugitive economic offender” shall be taken from The Fugitive Economic Offenders Act, 2018.

Issue of civil and administrative directions against the Applicant during the pendency of Settlement Proceedings: Under the New Settlement Regulations, a specific provision has been inserted clarifying that SEBI is empowered to issue interim civil and administrative directions against the Applicant if necessary, to protect the interest of investors and to maintain market integrity during the pendency of Settlement Proceedings.

Hence, filing of a Settlement Application under these Regulations will prohibit SEBI from taking any Penal action but it may for the interest of investors and market integrity issue interim civil and administrative directions.

Constitution of the High Powered Advisory Committee (“HPAC”): Under the Old Settlement Regulations,

the constitution of HPAC included a judge of a High court and three external experts of securities market. Further, the Old Settlement Regulations did not specify a situation where a member or members of the HPAC may recuse themselves with regard to certain applications for reasons relating to conflict of interests.

HPAC constituted under the New Settlement Regulations can now have a judicial member who has been the Judge of the Supreme Court or a High Court and three external experts of securities market. Further, in order to impart transparency in the process, the role of the HPAC (including instances of recusal by members of the HPAC) are specifically defined under the New Settlement Regulation:

If any of the member of HPAC recused himself, then the remaining two or more members may submit their recommendation on the terms of settlement. In situations, where no consensus is arrived upon by the members of the HPAC, the Judicial member's recommendation would act as the veto. If the judicial member has recused himself then the recommendations of all the members would be submitted before the Panel of Whole Time Members.

Increase in Indicative Amount for Settlement: Earlier, the Indicative amount specified under Old Settlement Regulations for applicants was Rs. 2 lakhs for first time applicant and Rs. 5 lakhs for others. Under the New Settlement Regulations, the minimum Indicative amount has now been increased from 2 lakhs to 3 lakhs for first time applicants and from 5 lakhs to 7 lakhs for others. Settlement Schemes In the past, SEBI came up with Settlement Schemes to settle the case wherein there is large number of defaulters although under the Old Settlement Regulations there was no provision to regularize such Settlement Scheme.

Under the new regime, SEBI inserted the provision wherein it may provide for a Settlement Scheme for any class of persons involved in similar specified defaults. Settlement through settlement schemes in a regularized manner would help SEBI in speedy disposal of similar matters which in turn is beneficial to SEBI as well as investors.

Settlement with Confidentiality : A new chapter, "Settlement with Confidentiality" has been added to provide protection to any person that provides material assistance to the Board in its fact-finding process and proceedings. The application has to be made to the Board prior to or pending investigation, inspection, inquiry or audit.

The Board would then decide on the facts and circumstances of the case to accept or reject the application seeking confidentiality. The identity of the applicant seeking confidentiality and the information, documents, evidence furnished by the applicant would be considered as confidential under this Chapter. Any disclosures which are required to be made as per the law, then they would not be covered under the confidentiality clause. For any violation of the disclosure and reporting requirements, no applications would be accepted seeking confidentiality.

The chapter also provides for interim confidentiality and assurance where no action would be initiated against the applicant if the Board deems it necessary that the information provided to it relates to a possible securities law violation that has occurred, is ongoing or about to occur.

ADJUDICATION AT SEBI

In cases where the Securities and Exchange Board of India has reasonable ground to believe that the transactions in securities of a company are being dealt with in a manner detrimental to the investors or the securities market; or any intermediary or any person associated with the securities market has violated any of the provisions under SEBI laws, or the rules or the regulations made or directions issued by the Board, the board may, at any time by order in writing, direct any person specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

Further, The Investigation authority may call for original or certified copies of the all the books, registers, other documents and record of, or relating to, the company or, as the case may be; and keep in its custody for six months.

The investigation authority may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

In case, where any person fails without reasonable cause or refuses for such action shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

Further, The Investigating Authority has authorized to make an application to the Magistrate or Judge of such designated court in Mumbai or such other authority notified by the Central Government for an order for the seizure of such books, registers, other documents and record. Upon such application the Magistrate or Judge of the Designated Court may, by order, authorise the Investigating Authority –

- (a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;
- (b) to search that place or those places in the manner specified in the order; and
- (c) to seize books, registers, other documents and record, it considers necessary for the purposes of the investigation:

However, the Magistrate or Judge of the Designated Court should not authorise seizure of books, registers, other documents and record, of any listed public company or a public company (not being the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless such company indulges in insider trading or market manipulation.

PUNISHMENT FOR NON-COMPLIANCES UNDER SEBI ACT, 1992

Section 24(1) of the SEBI Act, 1992, Provide that without prejudice to any award of penalty by the adjudicating officer, if any person contravenes or attempts to contravene or abets the contravention of the provisions of SEBI Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

In case, If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

Further, the Section 28A of the SEBI Act, 1992 also provides that if a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

Further, Section 12A of the SEBI Act, 1992 which provides for the Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control provides that No person shall directly or indirectly:

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of SEBI Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (d) engage in insider trading;
- (e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognized stock exchange in contravention of the regulations made under this Act.

Composition of offences under SEBI Act, 1992

According to Section 24 A of the SEBI Act, 1992, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal (SAT) or a court before which such proceedings are pending

Power to Grant Immunity

According to Section 24B of the SEBI Act, 1992, The Central Government may grant an immunity to any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of the alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation.

However, the immunity could not be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity.

PENALTIES AND ADJUDICATION UNDER SEBI ACT, 1992

(i) Penalty for failure to furnish information, return, etc.

Section 15A. If any person, who is required under SEBI Act or any rules or regulations made thereunder,—

- (a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
- (b) to file any return or furnish any information, books or other documents within the time specified

therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

- (c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

(ii) Penalty for failure by any person to enter into agreement with clients

Section 15B. If any person, who is registered as an intermediary and is required under SEBI Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

(iii) Penalty for failure to redress investors' grievances

Section 15C. If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

(iv) Penalty for certain defaults in case of mutual funds

Section 15D. If any person, who is—

- (a) required under SEBI Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees;
- (b) registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
- (c) registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
- (d) registered as a collective investment scheme, including mutual funds, fails to dispatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
- (e) registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

- (f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

(v) Penalty for failure to observe rules and regulations by an asset management company

Section 15E. Where any asset management company of a mutual fund registered under SEBI Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies, such asset management company shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

(vi) Penalty for default in case of stock brokers

Section 15F. If any person, who is registered as a stock broker under this Act,—

- (a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to for which the contract note was required to be issued by that broker;
- (b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees;
- (c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

(vii) Penalty for insider trading

Section 15G. If any insider who,—

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or
- (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

(viii) Penalty for non-disclosure of acquisition of shares and takeovers

Section 15H. If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—

- (i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
- (ii) make a public announcement to acquire shares at a minimum price; or
- (iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or
- (iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,

he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

(ix) Penalty for fraudulent and unfair trade practices

Section 15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

(x) Penalty for contravention where no separate penalty has been provided

Section 15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

(xi) Power to adjudicate

Section 15-I. (1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB, the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in subsection (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

(3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.

(xii) Factors to be taken into account by the adjudicating officer.

Section 15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely :—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

NON-COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

SEBI vide its powers under Section 11A(2) of the SEBI Act, 1992 read with Section 9 and 21 of the Securities Contracts (Regulation) Act, 1956 and read with regulation 98 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”), had issued a Circular dated November 30, 2015, specifying the uniform structure for imposing fines as a first resort for non-compliance with certain provisions of the Listing Regulations and the standard operating procedure for suspension of trading in case the non-compliance is continuing and/or repetitive. Thereafter, SEBI had issued another Circular dated October 26, 2016 advising the manner of freezing of holdings of the promoter and promoter group of a listed entity that failed to pay fines levied by the stock exchange(s). On the basis of the experience gained and to streamline the process, to maintain consistency and to adopt a uniform approach in the matter of levy of fines for non-compliance with certain provisions of the Listing Regulations, the manner of suspension of trading of securities of a listed entity and the manner of freezing the holdings of the promoter and promoter group of a non-compliant listed entity, it has been decided to SEBI has issued Circular on May 03, 2018, in super session of the Circulars bearing reference numbers CIR/CFD/CMD/12/2015 dated November 30, 2015 and SEBI/HO/CFD/CIR/P/2016/116 dated October 26, 2016. This Circular shall come into force with effect from compliance periods ending on or after September 30, 2018.

Through this circular the stock exchanges shall, having regard to the interests of investors and the securities market:

- a) take action in case of non-compliances with the Listing Regulations and.
- b) follow the Standard Operating Procedure (“SOP”) for suspension and revocation of suspension of trading of specified securities However the Stock Exchanges may deviate from the above, if found necessary, only after recording reasons in writing.

In order to ensure effective enforcement of the Listing Regulations, the depositories, on receipt of intimation from the concerned recognized stock exchange, shall freeze or unfreeze, as the case may be, the entire shareholding of the promoter and promoter group in such non-compliant listed entity as well as all other securities held in the demat account of the promoter and promoter group. Further if a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action in consultation with each other.

The recognized stock exchanges shall disclose on their website the action(s) taken against the listed entities for non-compliance(s); including the details of the respective requirement, amount of fine levied, the period of suspension, details regarding the freezing of shares, etc.

The recognized stock exchanges may keep in abeyance the action or withdraw the action in specific cases where specific exemption from compliance with the requirements under the Listing Regulations/moratorium on enforcement proceedings has been provided for under any Act, Court/Tribunal Orders etc.

ACTION TO BE TAKEN IN CASE OF NON-COMPLIANCES

Regulation	Fine payable and/or other action to be taken for non-compliance in respect of listed entity
Regulation 6(1)	₹1,000 per day for non-compliance with requirement to appoint a qualified company secretary as the compliance officer
Regulation 7(1)	₹1,000 per day for non-compliance with requirement to appoint share transfer agent

Regulation 13(1)/13(3)	₹1,000 per day for failure to ensure that adequate steps are taken for expeditious redressal of investor complaints Non-submission of the statement on shareholder complaints within the period prescribed under this regulation or under any circular issued in respect of redressal of investor grievances
Regulation 17(1)	₹5,000 per day for non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director` 5,000 per day
Regulation 18(1)	₹2,000 per day for non-compliance with the constitution of audit committee
Regulation 19(1)/19(2)	₹2,000 per day for non-compliance with the constitution of nomination and remuneration committee
Regulation 20(2)	₹2,000 per day for non-compliance with the constitution of stakeholder relationship committee
Regulation 21(2)	₹2,000 per day for non-compliance with the constitution of risk management committee
Regulation 27(2)	₹2,000 per day for non-submission of the Corporate governance compliance report within the period provided under this regulation
Regulation 29(2)/29(3)	₹10,000 per instance of non-compliance per item for delay in furnishing prior intimation about the meeting of the board of directors
Regulation 31	₹2,000 per day for non-submission of shareholding pattern within the period prescribed
Regulation 32(1)	₹1,000 per day for non-submission of deviations/variations in utilization of issue proceeds
Regulation 33	₹5,000 per day for non-submission of the financial results within the period prescribed under this regulation
Regulation 34	₹2,000 per day for non-submission of the Annual Report within the period prescribed under this regulation
Regulation 39(3)	₹1,000 per day for non-submission of information regarding loss of share certificates and issue of the duplicate certificates within the period prescribed under this regulation
Regulation 42(2)/42(3)/42(4)/42(5)	₹10,000per instance of non-compliance per item Delay in/ non-disclosure of record date/ dividend declaration or non-compliance with ensuring the prescribed time gap between two record dates/ book closure dates
Regulation 44(3)	₹10,000 per instance of non-compliance Non-submission of the voting results within the period provided under this regulation

Regulation 46	<p>Non-compliance with norms pertaining to functional website Advisory/warning letter per instance of non-compliance per item`10,000 per instance for every additional advisory/warning letter exceeding the four advisory/ warning letters in a financial year</p> <p>2. Concerned recognized stock exchange(s) shall display on their website non-compliance by the listed entity and details of fine levied/ action taken.</p> <p>3. The amount of fine realized as per the above structure shall be credited to the “Investor Protection Fund” of the concerned recognized stock exchange.</p> <p>4. The fines specified above shall continue to accrue till the time of rectification of the non-compliance to the satisfaction of the concerned recognized stock exchange or till the scrip of the listed entity is suspended from trading for non-compliance with aforesaid provisions. Such accrual shall be irrespective of any other disciplinary/ enforcement action(s) initiated by recognized stock exchange(s)/SEBI.</p> <p>5. Every recognized stock exchange shall review the compliance status of the listed entities within 15 days from the date of receipt of information and shall issue notices to the non-compliant listed entities to ensure compliance and collect fine as per this circular within 15 days from the date of such notice. While issuing the said notice, the recognized stock exchange shall also send intimation of notice to other recognized stock exchange(s) where the shares of the non-compliant entity are listed.</p> <p>6. If the non-compliant listed entity fails to comply with the aforesaid requirement(s) and/or pay fine levied within the stipulated period as per the notice stated above, the concerned recognized stock exchange(s) shall, upon expiry of the period indicated in the notice, forthwith intimate the depositories to freeze the entire shareholding of the promoter and promoter group in such entity as well as all other securities held in the demat account of the promoter and promoter group.</p> <p>7. If the non-compliant listed entity subsequently complies with the respective requirement(s) and pays the fine levied, in terms of this Circular, the concerned recognized stock exchange(s) shall display on their website compliance and status of fines paid by the listed entity. Simultaneously, the recognized stock exchange(s) shall intimate the depositories to unfreeze the entire shareholding of the promoter and promoter group in such entity as well as all other securities held in the demat account of the promoter and promoter group, after one month from the date of compliance.</p> <p>8. If any non-compliant listed entity fails to pay the fine despite receipt of the notice as stated above, the recognized stock exchange(s) may also initiate appropriate enforcement action.</p> <p>9. The recognised stock exchange(s) shall also advise the non-compliant listed entity to ensure that the subject matter of non-compliance which has been identified and indicated by the recognised stock exchange(s) and any subsequent action taken by the recognised stock exchange(s) in this regard shall be placed before the Board of Directors of the company in its next meeting. Comments made by the board shall be duly informed to the recognised stock exchange(s) for dissemination.</p>
---------------	--

STANDARD OPERATING PROCEDURE (SOP)

The SEBI has issued the following SOP for dealing with the Non compliances under SEBI (LODR) Regulation, 2015. If a listed entity is non-compliant with the provisions of the Listing Regulations, the stock exchange(s) should:

(a) move the scrip of the listed entity to “Z” category wherein trades shall take place on ‘Trade for Trade’ basis by following the below procedure

- i. If a listed entity commits default in complying with the provisions of the Listing Regulations as specified under paragraph 2 above, the concerned recognised stock exchange(s) shall, in addition to imposing fine under paragraph 1 in Annexure I of this Circular, move the scrip of the listed entity to “Z” category wherein trades shall take place on ‘Trade for Trade’ basis.
- ii. The recognized stock exchange(s) shall give 7 days prior public notice to investors before moving the scrip to “Z” category or while moving the scrip out of “Z” category. While issuing the notice, the recognized stock exchange(s) shall intimate the other recognized stock exchange(s) where the shares of the non-compliant entity are listed.
- iii. The recognised stock exchange(s) shall move back the scrip of the listed entity from “Z” category to the normal trading category (if not suspended as specified in paragraph B below), provided it complies with respective provisions of the Listing Regulations and pays the fine imposed as stated above. While moving the scrip back to normal trading category the recognized stock exchange(s) shall intimate the other recognized stock exchange(s) where the shares of the non-compliant entity are listed.

(b) suspend trading in the shares of such listed entity by following the below procedure

- i. Before suspending the trading of a scrip, the concerned recognized stock exchange(s) shall send written intimation to the non-compliant listed entity calling upon it to comply with respective requirement(s) and pay the applicable fine within 21 days of the date of the intimation. While issuing the said intimation, the recognized stock exchange(s) shall also inform other recognized stock exchange(s) where the shares of the non-compliant entity are listed to ensure that the date of suspension is uniform across all the recognised stock exchange(s). Simultaneously, the recognized stock exchange(s) shall give a public notice on its website proposing possible suspension of trading in the shares of the non-compliant listed entity.
- ii. If the non-compliant listed entity complies with respective requirement(s) and pays fine two working days before the proposed date of suspension, the trading in its shares shall not be suspended and the concerned recognized stock exchange(s) shall give a public notice on its website informing compliance by the listed entity. While issuing the said notice, the recognized stock exchange(s) shall send intimation of notice to other recognized stock exchange(s) where the shares of the entity are listed. Simultaneously, the recognized stock exchange(s) shall intimate the depositories to unfreeze the entire shareholding of the promoter and promoter group in such entity as well as all other securities held in the demat account of the promoter and promoter group, after one month from the date of compliance.
- iii. In case of failure to comply with respective requirement(s) and/or pay fine within stipulated period, the recognized stock exchange(s) shall suspend the trading in the shares of a non-compliant listed entity. The entire shareholding of the promoter and promoter group in the non-compliant listed entity as well as all other securities held in the demat account(s) of the promoter and promoter group shall remain frozen during the period of suspension.
- iv. While suspending trading in the shares of the non-compliant entity, the recognized stock exchange(s) shall send intimation of suspension to other recognized stock exchange(s) where the shares of the non-compliant entity are listed to ensure that the date of suspension is uniform across all the recognised stock exchange(s).

- v. After 15 days of suspension, trading in the shares of non-compliant entity may be allowed on 'Trade for Trade' basis, on the first trading day of every week for 6 months. In this regard, the recognized stock exchange(s) shall give instruction to its trading members to obtain confirmation from clients before accepting an order for purchase of shares of the non-compliant listed entity on 'Trade for Trade' basis.
- vi. The recognized stock exchange(s) shall put in place a system to publish a caution message on its trading terminals, as follows: "Trading in shares of the <Name of the Listed Entity> is presently under 'suspension and trade to trade basis' and trading shall stop completely and compulsory delisting may be initiated if <Name of the Listed Entity> does not become compliant by <Date>".

2. Criteria for suspension of the trading in the shares of the listed entities:

- (a) Failure to comply with regulation 17(1) with respect to board composition including appointment of woman director for two consecutive quarters;
- (b) Failure to comply with regulation 18(1) with respect to constitution of audit committee for two consecutive quarters;
- (c) Failure to comply with regulation 27(2) with respect to submission of corporate governance compliance report for two consecutive quarters;
- (d) Failure to comply with regulation 31 with respect to submission of shareholding pattern for two consecutive quarters;
- (e) Failure to comply with regulation 33 with respect to submission of financial results for two consecutive quarters;
- (f) Failure to comply with regulation 34 with respect to submission of annual report for two consecutive financial years;
- (g) Failure to submit information on the reconciliation of shares and capital audit report, for two consecutive quarters;
- (h) Receipt of the notice of suspension of trading of that entity by any other recognized stock exchange on any or all of the above grounds.

3. If the non-compliant listed entity complies with the Requisite requirement(s) after the date of suspension and pays the applicable fine, the recognized stock exchange(s) shall revoke the suspension of trading of its shares by following the below procedure

- i. If the non-compliant listed entity complies with the aforesaid requirement(s) and pays the applicable fine after trading is suspended in the shares of the non-compliant entity, the recognized stock exchange(s) shall, on the date of compliance, give a public notice on its website informing compliance by the listed entity. The recognized stock exchange(s) shall revoke the suspension of trading of its shares after a period of 7 days from the date of such notice.

While issuing the said notice, the recognized stock exchange(s) shall send intimation of notice to other recognized stock exchange(s) where the shares of the entity are listed. After revocation of suspension, the trading of shares shall be permitted only in 'Trade for Trade' basis for a period of 7 days from the date of revocation and thereafter, trading in the shares of the entity shall be shifted back to the normal trading category.

- ii. The recognized stock exchange(s) shall intimate the depositories to unfreeze the entire shareholding of the promoter and promoter group in such entity as well as all other securities held in the demat account of the promoter and promoter group, after three months from the date of revocation of the suspension

4. If the non-compliant listed entity fails to comply with the aforesaid requirement(s) or fails to pay the applicable

fine within 6 months from the date of suspension, the recognized stock exchange(s) shall initiate the process of compulsory delisting of the non-compliant listed entity in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities Contracts (Regulation) Rules, 1957 and the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 as amended from time to time .

CONTRAVENTION AND COMPOUNDING UNDER FEMA REGULATIONS

Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/ regulations/ notification/ orders/ directions/ circulars issued there under. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contraventions as defined under section 131 of FEMA, 1999 except the contravention under section 3(a) for a specified sum after offering an opportunity of personal hearing to the contravener. It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the Act] by minimizing transaction costs. Willful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank. Further, in terms of the proviso to rule 8 (2) of Foreign Exchange (Compounding Proceedings) Rules, 2000 inserted vide GOI notification dated February 20, 2017, if the Enforcement Directorate is of the view that the compounding proceeding relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation, such cases will not be compounded by the Reserve Bank.

Application for Compounding

Any person who contravenes any provision of the FEMA, 1999 [except section 3(a)] or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank. Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement.

Timelines for application for compounding

When a person is made aware of the contravention of the provisions of FEMA, 1999 by the Reserve Bank or any other statutory authority or the auditors or by any other means, she/he may apply for compounding. One can also make an application for compounding, *suo moto*, on becoming aware of the contravention.

Documents for application for compounding

The compounding of contraventions under Foreign Exchange Management Act (FEMA), 1999 is a voluntary process by which an applicant can seek compounding of an admitted contravention of any provision of FEMA, 1999 under Section 13(1) of the FEMA, 1999.

The Forms prescribed are given below:

- 1) The application having details of applicant, nature of contravention and facts of the cases
- 2) The details of irregularities whether relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office/ Liaison Office, as applicable.
- 3) Undertaking that the applicant is not under investigation of any agency such as DOE, CBI, etc. in order to complete the compounding process within the time frame
- 4) Mandate and details of their bank account:

Compounding of Contraventions under FEMA Regulations

The powers to compound the following contraventions of FEMA 20/2000-RB dated May 3, 2000 as then applicable have been vested with the Regional Offices of Foreign Exchange Department (FED), Reserve Bank:

FEMA Regulation	Brief Description of Contravention
Paragraph 9(1)(A) of Schedule I	Delay in reporting inward remittance for issue of shares
Paragraph 9(1)(B) of Schedule I	Delay in filing form FC(GPR) after issue of shares.
Paragraph 8 of Schedule I	Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.
Paragraph 5 of Schedule I	Violation of pricing guidelines for issue of shares.
Regulation 2(ii) read with Regulation 5(1)	Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause, etc.
Paragraph 2 or 3 of Schedule I	Issue of shares without approval of RBI or FIPB respectively, wherever required.
Regulation 10A (b)(i) read with paragraph 10 of Schedule I	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.
Regulation 10B (2) read with paragraph 10 of Schedule I	Delay in submission of form FC-TRS on transfer of shares from Non-Resident to Resident.
Regulation 4	Taking on record transfer of shares by investee company, in the absence of certified from FC-TRS.
Regulation 13.1(1)	Delay in reporting inward remittance received for issue of shares.
Regulation 13.1(2)	Delay in filing form FC(GPR) after issue of shares.
Regulation 13.1(3)	Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA).
Paragraph 2 of Schedule I	Delay in issue of shares/refund of share application money beyond 60 days, mode of receipt of funds, etc.
Regulation 11	Violation of pricing guidelines for issue/transfer of shares.
Regulation 2(v) read with Regulation 5	Issue of ineligible instruments
Regulation 16.B	Issue of shares without approval of RBI or Government, wherever required.
Regulation 13.1(4)	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.
Regulation 4	Receiving investment in India from non-resident or taking on record transfer of shares by investee company

The officers attached to the The Foreign Exchange Department, Central Office Cell, Reserve Bank of India, 6, Sansad Marg, New Delhi – 110001 with effect from July 15, 2014 are now authorized to compound the

contraventions as under:

Sr. No	FEMA Notification	Brief Description of Contravention
1	FEMA 7/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property outside India
2	FEMA 21/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property in India
3	FEMA 22/2000-RB, dated 3-5-2000	Contraventions relating to establishment in India of Branch office, Liaison Office or project office
4	FEMA 5/2000-RB, dated 3-5-2000	Contraventions falling under Foreign Exchange Management (Deposit) Regulations, 2000

Procession of Compounding Application

The Reserve Bank makes a scrutiny of the application to verify whether the required details and documents furnished by the applicant are prima-facie in order. Applications with incomplete details or where the contravention is not admitted will be returned to the applicant. On the admission of applications, the Reserve Bank will examine and decide if the contravention is technical, material or sensitive in nature. If technical, the applicant will be issued a cautionary advice. If the contravention is material, it will be compounded by imposing an amount after giving an opportunity to the contravener to appear before the compounding authority for a personal hearing. If the contravention is sensitive in nature requiring further investigations, the same would be referred to the Directorate of Enforcement (DoE) for further investigation/ action. It may be noted that the Cases of contravention, such as, those having serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation are sensitive contraventions.

Technical, Material or Sensitive contravention

Whether contravention under the Foreign Exchange Management Act (FEMA) is to be treated as technical and/or minor or serious would be decided by the Reserve Bank on the merits of the case. The application will be disposed of keeping in view the procedure notified in this regard. Persons who have contravened the provisions of FEMA should not take upon themselves *suo moto*, or on the basis of external advice to decide whether a particular contravention is technical or minor in nature and, hence, no compounding application need be submitted to the Reserve Bank. If such applications for compounding are not made, the person concerned shall expose himself/herself to such action under the provisions of FEMA as the authorities may deem appropriate. The persons concerned should, therefore, in their own interest submit their applications for compounding of contravention under FEMA to the Reserve Bank at the earliest opportunity.

It is clarified that whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide (i) whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice; (ii) whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed or (iii) whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE). However, once a compounding application is filed by the concerned entity *suo moto*, admitting the contravention, the same will not be considered as 'technical' or 'minor' in nature and the compounding process shall be initiated in terms of section 15 (1) of Foreign Exchange Management Act, 1999 read with Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

Personal Hearing

It is not mandatory to attend the personal hearing. In case a person opts not to attend the personal hearing he may indicate his preference in writing. The application would be disposed of on the basis of documents submitted to the Compounding Authority. It may be noted that appearing for or opting out of the personal hearing does not have any bearing whatsoever on the amount imposed in the compounding order.

However, another person may be authorised by the applicant to attend the personal hearing on his behalf but only with proper written authority. It has to be ensured that the person appearing on behalf of the applicant is conversant with the nature of contravention and the related matters. However, the Reserve Bank encourages the applicant to appear directly for the personal hearing rather than being represented/ accompanied by legal experts/consultants, etc. as the compounding is only for admitted contraventions.

The Compounding Authority passes an order indicating details of the contravention and the provisions of FEMA, 1999 that have been contravened. The sum payable for compounding the contravention is indicated in the compounding order. The contravention is compounded by payment of the amount imposed.

On realization of the sum for which contravention is compounded, a certificate shall be issued by the Reserve Bank indicating that the applicant has complied with the order passed by the Compounding Authority.

There cannot be a second adjudication by any authority on the contravention compounded. In terms of FEMA, 1999, where a contravention has been compounded, no proceeding or further proceeding, as the case may be, can be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention compounded.

Reporting of the Non Compliance by the Company Secretaries

For every auditor, it is his duty to give report to the Board of the company on the non-compliance found by him during the course of his audit assignments. The Company Secretary can primarily report on the non-compliance through:

1. Secretarial Audit Report
2. Certification of Annual Return
3. Internal Audit Reports
4. Compliance & Due Diligence Report

Manner of Reporting of Non-Compliance

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. When the professional is not able 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.
4. If such limitations are so material that the professional is unable to express any opinion, he 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.
5. The professional may report with the Disclaimer of the fact and information.

SECTION WISE OFFENCE AND CONSEQUENCES THEREOF

1	Section 8 Formation of companies with Charitable Objects, etc.	(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both: Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.
2	Section 10 A Commencement of business etc.	(2) If any default is made in complying with the requirements of section 10 A, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees. (3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.
3	Section 12 Registered Office of Company	(8) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.
4	Section 15 Alteration of Memorandum or Articles to be Noted in Every Copy	(2) If a company makes any default in complying with the provisions of sub-section (1), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.
5	Section 16 Rectification of Name of Company	(3) If a company makes default in complying with any direction given under sub-section (1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.

6	Section 17 Copies of Memorandum, Articles, etc., to be Given to Members	(2) If a company makes any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.
7	Section 33 Issue of Application Forms for Securities	(3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.
8	Section 39 Allotment of Securities by Company	(5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less
9	Section 40 Securities to be Dealt with in Stock Exchanges	(5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.
10	Section 46 Certificate of Shares	(5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.
11	Section 48 Variation of Shareholders' Rights	(5) Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.
12	Section 53 Prohibition on Issue of Shares at Discount	(3) Where any company fails to comply with the provisions of section 53, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.

13	Section 56 Transfer and Transmission of Securities	(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.
14	Section 59 Rectification of Register of Members	(5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.
15	Section 60 Publication of Authorised, Subscribed and Paid-Up Capital	(2) If any default is made in complying with the requirements of sub-section (1), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.
16	Section 64 Notice to be Given to Registrar for Alteration of Share Capital	(2) Where any company fails to comply with the provisions of sub-section (1) of Section 64, such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less
17	Section 67 Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares	(5) If a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.
18	Section 68 Power of Company to Purchase its Own Securities	(11) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.
19	Section 71 Debentures	(11) If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.

20	Section 74 Repayment of Deposits, etc., Accepted before Commencement of this Act	(3) If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.
21	Section 86 Punishment for Contravention	If any company contravenes any provision of this Chapter, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both. (2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.
22	Section 88 Register of Members, etc.	(5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.
23	Section 89 Declaration in Respect of Beneficial Interest in any Share	(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.
24	Section 90 Register of significant beneficial owners in a company	(10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees or with both and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

		<p>(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.</p> <p>(12) If any person willfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.</p>
25	<p>Section 91</p> <p>Power to Close Register of Members or Debenture-Holders or Other Security Holders</p>	<p>(2) If the register of members or of debenture-holders or of other security holders is closed without giving the notice as provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.</p>
26	<p>Section 92</p> <p>Annual Return</p>	<p>(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees</p> <p>(6) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.</p>
27	<p>Section 94</p> <p>Place of keeping and Inspection of Registers, Returns, etc.</p>	<p>(4) If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continue.</p>
28	<p>Section 99</p> <p>Punishment for Default in Complying with Provisions of Sections 96 to 98</p>	<p>If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continue.</p>

29	Section 100 Calling of Extraordinary General Meeting	(6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.
30	Section 102 Statement to be Annexed to Notice	(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.
31	Section 105 Proxies	3) If default is made in complying with sub-section (2), every officer of the company who is in default shall be liable to a penalty of five thousand rupees.
32	Section 111 Circulation of Members' Resolution	(5) If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.
33	Section 117 Resolutions and Agreements to be Filed	If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.
34	Section 118 Minutes of Proceedings of General Meeting, Meeting of Board of Directors and Other Meeting and Resolutions Passed by Postal Ballot	(11) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees. (12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
35	Section 119 Inspection of Minute-Books of General Meeting	(3) If any inspection under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each such refusal or default, as the case may be.

36	Section 121 Report on Annual General Meeting	(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.
37	Section 124 Unpaid Dividend Account	(7) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
38	Section 127 Punishment for Failure to Distribute Dividends	Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues
39	Section 134 Financial Statement, Board's Report, etc	(8) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.
40	Section 136 Right of Member to Copies of Audited Financial Statement	(3) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

41	Section 137 Copy of Financial Statement to be filed with Registrar	(3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.
42	Section 140 Removal, Resignation of Auditor and Giving of Special Notice	(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.
43	Section 147 Punishment for Contravention	<p>(1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.</p> <p>(2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees or four times the remuneration of the auditor, whichever is less.</p> <p>Provided that if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less.</p>

44	Section 148 Central Government to Specify Audit of Items of Cost in Respect of Certain Companies	(8) If any default is made in complying with the provisions of this section,— a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147; b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.
45	Section 157 Company to Inform Director Identification Number to Registrar	(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.
46	Section 159 Penalty for Default of Certain Provisions	If any individual or director of a company makes any default in complying with any of the provisions of section 152 (appointment of Director), section 155 (Prohibition to Obtain More than One Director Identification Number) and section 156 (Director to Intimate Director Identification Number), such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.
47	Section 165 Number of Directorships	(6) If a person accepts an appointment as a director in contravention of sub-section (1) of section 165, he shall be liable to a penalty of five thousand rupees for each day after the first during which such contravention continues.
48	Section 172 Punishment for contravention of chapter (xi)	If a company contravenes any of the provisions of Chapter (xi) and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.
49	Section 178 Nomination and Remuneration Committee and Stakeholders Relationship Committee	(8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both:

50	Section 182 Prohibitions and Restrictions Regarding Political Contributions	(4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.
51	Section 185 Loan to Directors, etc.	(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,— (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.
52	Section 186 Loan and Investment by Company	(13) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
53	Section 187 Investments of Company to be Held in its Own Name	(4) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.
54	Section 190 Contract of Employment with Managing or Whole-Time Directors	(3) If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.
55	Section 191. Payment to Director for Loss of Office, etc., in Connection with Transfer of Undertaking, Property or Shares	(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.

56	Section 197. Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits	(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.
57	Section 203 Appointment of Key Managerial Personnel	(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.
58	Section 204 Secretarial Audit for Bigger Companies	(4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or 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.
60	Section 206 Power to Call for Information, Inspect Books and Conduct Inquiries	(7) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.
61	Section 213 Investigation into Company's Affairs in Other Cases	<p>If after investigation it is proved that—</p> <ul style="list-style-type: none"> i. the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or ii. any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud <p>then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.</p>

62	Section 221 Freezing of Assets of Company on Inquiry and Investigation	(2) In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.
63	Section 222 Imposition of Restrictions Upon Securities	(2) Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.
64	Section 232 Merger and Amalgamation of Companies	(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.
65	Section 238 Registration of Offer of Schemes Involving Transfer of Shares.	The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be liable to a penalty of one lakh rupees.
66	Section 242 Powers of Tribunal	(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.
67	Section 245 Class Action	(7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupee

68	Section 249 Restrictions on Making Application Under Section 248 in Certain Situations.	(2) If a company files an application under sub-section (2) of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees.
69	Section 274 Directions for Filing Statement of Affairs	4) If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.
70	Section 302 Dissolution of Company by Tribunal	(4) If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues
71	Section 338 Liability Where Proper Accounts not Kept	(1) Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.
72	Section 348 Information as to Pending liquidations	(7) If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (1) audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.
73	Section 350 Company Liquidator to Deposit Monies into Scheduled Bank	(2) If any Company Liquidator at any time retains for more than ten days a sum exceeding five thousand rupees or such other amount as the Tribunal may, on the application of the Company Liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the Tribunal, he shall— <ul style="list-style-type: none"> a. pay interest on the amount so retained in excess, at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Tribunal; b. be liable to pay any expenses occasioned by reason of his default; and c. also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, disallowed, or may also be removed from his office.

74	Section 356 Powers of Tribunal to Declare Dissolution of Company Void	(2) It shall be the duty of the Company Liquidator or the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if the Company Liquidator or the person fails so to do, the Company Liquidator or the person shall be punishable with fine which may extend to ten thousand rupees for every day during which the default continues.
75	Section 392 Punishment Contravention	for Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twentyfive thousand rupees but which may extend to five lakh rupees, or with both.
76	Section 403 Fee for Filing, etc	where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies: Provided further that where the document, fact or information, as the case may be, in cases other than referred to in the first proviso, is not submitted, filed, registered or recorded, as the case may be, within the period provided in the relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded as the case may be, on payment of such additional fee as may be prescribed and different fees may be prescribed for different classes of companies: Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable.

77	Section 405 Power of Central Government to Direct Companies to Furnish Information or Statistics	(4) If any company fails to comply with an order made under subsection (1) or subsection (3), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.
78	Section 449 Punishment for False Evidence.	if any person intentionally gives false evidence— (a) upon any examination on oath or solemn affirmation, authorized under this Act; or (b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.
79	Section 450 Punishment Where No Specific Penalty or Punishment is Provided	If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.
80	Section 451 Punishment in Case of Repeated Default	If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.
81	Section 452 Punishment for Wrongful Withholding of Property	452. (1) If any officer or employee of a company— (a) wrongfully obtains possession of any property, including cash of the company; or (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

		(2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.
82	Section 453 Punishment for Improper Use of “Limited” or “Private Limited”	If any person or persons trade or carry on business under any name or title, of which the word “Limited” or the words “Private Limited” or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.
83	Section 454 Adjudication of Penalties	(8) (i) Where company fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees. (ii) Where an officer of a company or any other person who is in default fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.
84	Section 454A Penalty for repeated default	Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.

85	<p>Section 76A</p> <p>Punishment for Contravention of Section 73 or Section 76</p>	<p>Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,—</p> <p>(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees or twice the amount of deposit accepted by the company, whichever is lower rupees but which may extend to ten crore rupees; and</p> <p>(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years and with fine] which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees,</p> <p>Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.</p>
86	<p>Section 42.</p> <p>Offer or Invitation for Subscription of Securities on Private Placement</p>	<p>(9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.</p> <p>(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.</p>
87	<p>Section 446A</p> <p>Factors for determining level of punishment.</p>	<p>The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:—</p> <p>(a) size of the company;</p> <p>(b) nature of business carried on by the company;</p> <p>(c) injury to public interest;</p> <p>(d) nature of the default; and</p> <p>(e) repetition of the default.</p>

88	Section 446B Lesser penalties for One Person Companies or small companies.	if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be liable to a penalty which shall not be more than half of the Penalty specified in such section.
89	Section 447 Punishment for Fraud.	Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever 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: Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. Provided further that 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 fifty lakh rupees or with both.

The several sections of the Companies Act, 2013 refer to section 447 for punishing fraudulent conduct, the list of all such sections is as under:

S. No.	Section	Non-Compoundable offences under Companies Act, 2013
1	7(5) & (6)	fraud/false information during incorporation of company:
2	8(11) Proviso	Formation of companies with charitable objects, etc.- fraudulent conduct of affairs
3	34	Criminal liability for misstatements in prospectus
4	36	Punishment for fraudulently inducing persons to invest money
5	38(1)	Punishment for personation for acquisition, etc., of securities
6	46(5)	Fraud in connection with duplicate Certificate of Shares
7	56	Depository or depository participant, with an intention to defraud a person, has transferred shares
8	66(10)	Reduction of Share Capital fraud
9	76A Proviso	Punishment for contravention of section 73 or section
10	86	Wilfully furnishes any false or incorrect information or knowingly suppresses any material information

11	90(12)	False/incorrect information or suppression of any material information in respect of significant beneficial ownership
12	140(5)Proviso	Removal of Auditor involved in fraud
13	206(4)Proviso	Power to call for information, inspect books and conduct enquires – conducting affairs of the company in a fraudulent manner
14	213 Proviso	Investigation into company's affairs in other cases
15	229	Penalty for furnishing false statement, mutilation destruction of documents to
16	251(1)	Fraudulent application for removal of name
17	339(3)	Liability for fraudulent conduct of business
18	448	Punishment for false statement

LESSON ROUND UP

- Every legislation has its own compliance requirement, investigation & prosecution mechanism by the regulator.
 - Offences under companies Act, 2013 can be classified based on the :
 - Depending on the type of punishment
 - Depending on Cognizability
 - Depending on Bail ability
 - Offences which is punishable with imprisonment or fine, or offence punishable with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court
- The complaint of SFIO is treated as police report under section 173 of the criminal procedure code 1973. Whereas, the complaint filed by the Registrar of Companies is not considered as a police report but a private complaint under section 190 of the criminal procedure code, 1973
- Compounding is nothing but admission of guilt and the Compoundable offences are not mandatorily punishable with imprisonment.
 - Offence which has been compounded, no prosecution can be launched against by the Registrar or by any shareholder of the company.
 - SEBI may order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board through a Investigating authority.
 - The stock exchanges shall follow the Standard Operating Procedure ("SOP") for suspension and revocation of suspension of trading of specified securities.

SELF TEST QUESTIONS

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Draft a note on the Offences under the Companies Act, 2013
2. Define the Compounding of offence and its effect of the compounding.
3. Describe the penalty for failure to furnish information, return, etc. under the SEBI Act, 1992
4. Describe the Consequence of the Contravention of provision of Acceptance of Deposits under the Companies Act, 2013.

[illegible]

PROFESSIONAL PROGRAMME
SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT
AND DUE DILIGENCE

PP-SACM&DD

TEST PAPER

WARNING

It is brought to the notice of all students that use of any malpractice in Examination is misconduct as provided in the explanation to Regulation 27 and accordingly the registration of such students is liable to be cancelled or terminated. The text of regulation 27 is reproduced below for information:

“27. Suspension and cancellation of examination results or registration.

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or the Committee concerned may suo motu or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity to state his case, suspend or debar the person from appearing in any one or more examinations, cancel his examination result, or studentship registration, or debar him from future registration as a student, as the case may be.

Explanation – Misconduct for the purpose of this regulation shall mean and include behaviour in a disorderly manner in relation to the Institute or in or near an Examination premises/centre, breach of any regulation, condition, guideline or direction laid down by the Institute, malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with the writing of any examination conducted by the Institute”.

PROFESSIONAL PROGRAMME

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE – TEST PAPER

(This Test Paper is for recapitulate and practice for the student. Student need not submit responses/Answers to this Test Paper)

Time allowed: 3 hours

Maximum Mark: 100

Total number of questions: 6

(All references to the sections relate to Companies Act 2013, unless stated otherwise)

PART – I (40 Marks)

(Compliance Management)

1. (a) The Corporate compliance framework consists of three key components: the Compliance Chart, Compliance Advisory and Compliance Scorecard. Comment **(5 Marks)**
- (b) In any organisation the Clear description of primary and secondary compliance ownership is also very important; define the role of the various level of management for compliance ownership. **(5 Marks)**
- (c) The Director of ABC limited OPC has requested to prepare the annual calendar of the events based on the minimum requirement prescribed in the law. You are requested to prepare the calendar of events with regard to the board meeting of the company. **(5 Marks)**
- (d) As an Internal Auditor of the XYZ Limited (Listed Company), you have been assigned the task for the review of the various policies of the company including policy on preservation of documents and archival of documents. Highlight the content of the policy on preservation of documents and archival of documents. **(5 Marks)**

OR

- 1A. (i) Describe the process of the setting up of the Compliance Framework. **(5 Marks)**
- (ii) The directors of the ABC Private Limited have sought your guidance for signing of financial statement and Annual return of the company. Prepare a note on the signing requirement of annual Return and the financial statement under the Companies Act, 2013. **(5 Marks)**
- (iii) List out the document / records which are available on the MCA website and can be cross verified by the person by opting online inspection of the documents of the company. **(5 Marks)**
- (iv) Prepare a note on the various types of KYC and requirement of Directors KYC under the Companies Act, 2013. **(5 Marks)**
2. (i) As a compliance officer of the company, you are requested to prepare compliance training and education programme, Highlight the points which should be included in the training programme. **(5 Marks)**
- (ii) The board of the XYZ Hospital limited is considering expansion plan of the company in the same industry, as a company secretary of the company you are requested to submit a report to the board of the company. List out the reporting process and points to be covered in the report. **(5 Marks)**
- (iii) List out the compliance requirement for the followings:
 - (a) Quarterly Compliance Report on Corporate Governance.
 - (b) Prior Intimation to Stock Exchange about Board Meeting for considering Financial Statement.
 - (c) Disclosures by a Director of his Interest.

- (d) Circulation of Financial Statement & other relevant Documents.
- (e) Extract of the annual return.

(2 Marks each)

Part – II (60 Marks)

(Secretarial Audit and Due Diligence)

- 3. (i) Explain the scope of Secretarial Audit under the Companies Act, 2013 **(7 Marks)**
- (ii) Briefly explain the Forensic Audit and the write the various purposes of the Forensic Audit. **(4 Marks)**
- (iii) Every Auditor should follow “The Principle of Confidentiality” while conducting the Audit assignment, Write down the various obligations imposes on the auditor in such principal. **(4 Marks)**

OR

- 3A. (i) Describe the Form and Content of Audit Engagement Letter. **(5 Marks)**
- (ii) Write down the difference between Audit Plan and Audit Programme. **(5 Marks)**
- (iii) Write down the circumstances wherein the auditor issues a modified opinion. **(5 Marks)**
- 4. (i) Working papers are the connecting link between the client's records and the audited records. In the light of the same describes the various types of working papers. **(5 Marks)**
- (ii) Explain the pre requisite for the Reporting by an auditor. **(5 Marks)**
- (iii) Differentiate between the Fraud and Non-compliances. **(5 Marks)**
- 5. (i) Explain the eligibility and procedural requirement for empanelment as Peer Reviewers. **(5 Marks)**
- (ii) Describe the various ethical principles which should be followed by the company secretaries. **(5 Marks)**
- (iii) ABD Limited (listed Company) has a failure to redress investors' grievances relating to the Transfer of the share, Write down the consequence which could be faced by the company under SEBI Act, 1992. **(5 Marks)**
- 6.(i) Write a note on the financial due diligence and its scope of financial due diligence. **(5 Marks)**
- (ii) Highlight the content of scheme of amalgamation which is to be prepared by the company. **(5 Marks)**
- (iii) The interaction through interviews is an effective method of the data collection and documentation. Write a note on the Interviews effectiveness for an auditor. **(5 Marks)**

BIBLIOGRAPHY

Website:

1. [https:// icsi.edu](https://icsi.edu)
2. <http://www.mca.gov.in/>
3. <http://ebook.mca.gov.in/>
4. <https://www.sebi.gov.in/>
5. <https://www.nn-group.com/>
6. <https://cag.gov.in/>
7. <https://www.investopedia.com/>
8. <https://www.wikipedia.org/>