Supplement for

EXECUTIVE PROGRAMME
(Old Syllabus)

- COMPANY ACCOUNTS, COST AND MANAGEMENT ACCOUNTING (Module I, paper 2)
- TAX LAWS (Module I, paper 3)
- COMPANY LAW (Module II, paper 4)
- SECURITIES LAWS AND COMPLIANCES (Module II, paper 6)

This supplement is based on those sections of the Companies Act, 2013 and the rules made there under which have been notified by the Government of India and came into force w.e.f. April 01, 2014 (Including amendments / clarifications / circulars issued there under upto June, 2014). In respect of sections of the Companies Act, 2013 which have not been notified, applicable sections of Companies Act, 1956 have been dealt with.

The students of old syllabus (2007 syllabus) are advised to read their Study Material with reference to this supplement. This supplement is updated upto 30th June, 2014.
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EXECUTIVE PROGRAMME
(Old Syllabus)

COMPANY ACCOUNTS, COST AND MANAGEMENT ACCOUNTING

MODULE I- PAPER 2
SHARE CAPITAL

Issue of shares

Meaning of shares
A share is one unit into which the total share capital is divided. Each share forms a unit of ownership and is offered for sale so as to raise capital for the company. The shares any member in a company are movable property transferable in the manner provided by the articles of the company. Face value of a share is the par value of the share. It is also known as the Nominal value or denomination of a share.

According to Section 2(84) of the Companies Act 2013, “share” means a share in the share capital of a company and includes stock. Thus, in other words, shares are divisions of the share capital of a company. A share represents a fractional part of the share capital of the company. For example, if a company has a share capital of Rs. 5,00,000 divided into 50,000 shares of Rs.10 each and a person who has taken 50 shares of the company is said to have a share of Rs. 500 in the share capital of the company.

Meaning of share capital
When total capital of a company is divided into shares, then it is called share capital. A joint stock company raises its capital by issue of shares to finance its activities. The Memorandum of Association of the company states the amount of capital with which the company is desired to be registered and the number of shares into which it is to be divided. It constitutes the basis of the capital structure of a company.

Kinds of share capital
The share capital of a company limited by shares shall be of two kinds under the Companies Act 2013, namely:—

(a) Equity share capital: Equity share capital with reference to any company limited by shares means all share capital which is not preference share capital. Equity share capital can be
i) with voting rights; or
ii) with differential rights as to dividend or voting or any other right.

(b) Preference share capital: Preference share capital with reference to any company limited by shares means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—
- payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
- repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.
Deemed preference share capital: The capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—
that in respect of dividends, in addition to the preferential rights to the payment of dividend, it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

that in respect of capital, in addition to the preferential right to the repayment, on a winding up, it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

**Voting rights on preference shares**

2013 Act provides that where a dividend in respect of a class of preferences shares has not been paid for a period of 2 years or more, such class of preferences shareholders shall have a right to vote on all the resolutions placed before a general meeting of the company. This is irrespective of whether the preferences shares are cumulative or non-cumulative. Thus, unlike 1956 Act, 2013 Act makes no distinction between cumulative preferences shares and non-cumulative preferences shares in the matter of the voting rights in the event of non-payment of dividend.

**Shares with differential rights**

The provisions relating to issue of shares with differential rights as to dividend, voting or otherwise have been retained in 2013 Act.

**Issue of Shares at Discount**

- When shares are issued at a price lower than the face value, they are said to be issued at discount. Thus, the excess of the face value over the issue price is the amount of discount. For example, if a share of ₹ 10 is issued at ₹ 9 then ₹ (10 – 9) = Re. 1 is the discount.

- As per companies Act 2013, a company shall not issue shares at a discount except as provided in section 54 for issue of sweat equity shares. Any share issued by a company at a discounted price shall be void.

- Where a company contravenes the provisions of 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 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 one lakh rupees but which may extend to five lakh rupees, or with both.

- 1956 Act permitted issue of shares at a discount to its par value subject to conditions. 2013 Act prohibits issue of shares at a discount except in case of "sweat equity shares" issued to the employees of the Company – "sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

**Utilization of securities premium**

Securities premium may be applied for permitted purposes. Utilization of securities premium for any other purpose would entail compliance with provisions relating to reduction of capital. For classes of companies to be prescribed in the Rules, utilization of securities premium for the following purposes will require such a company to ensure that the Accounting Standards prescribed have been complied:

- Issue of bonus equity shares
  - Writing off the expenses of or the commission paid on any issue of equity shares
  - Buy-back of shares or other securities
Interest on Calls-in-Advance
The amount received as calls-in-advance is a debt of the company, the company is liable to pay interest on the amount of Calls-in-Advance from the date of receipt of the amount till the date when the call is due for payment. Generally the Articles of the company specify the rate at which interest is payable. If the articles do not contain such rate, Table F of the Companies Act 2013 will be applicable which leaves the matter to the Board of directors subject to a maximum rate of 12% p.a. It is to be noted that the interest payable on Calls-in-Advance is a charge against the profits of the company. As such, Interest on Calls-in-Advance must be paid even when no profit is earned by the company.

Interest on Calls in Arrear
The interest on Calls-in-Arrear is recoverable according to the provisions in this regard in Articles of the company. But if the Articles are silent, Table ‘F’ of Schedule I of the Companies Act 2013, shall be applicable which prescribes that if a sum called in respect of shares is not paid before or on the day appointed for payment, the person who failed to pay shall pay thereof from the day appointed for payment to the time of actual payment at a rate not exceeding 10% per annum. However, the directors have the right to waive the payment of interest on Calls-in-Arrear. The interest on Calls-on-Arrear Account is transferred to the Profit and Loss Account at the end of the year.

Buy-Back of Shares
When a company has substantial cash resources, it may like to buy its own shares from the market particularly when the prevailing rate of its shares in the market is much lower than the book value or what the company perceives to be its true value. Buy back of shares enables the company to go back to its shareholders and offers to purchase from them the shares they hold. Buy Back of Securities is a very important tool for Companies who wants to reduce their Share Capital.

Advantages of Buy Back:
- It is an alternative mode of reduction in capital without requiring approval of the Court/CLB(NCLT),
- to improve the earnings per share;
- to improve return on capital, return on net worth and to enhance the long-term shareholders value;
- to provide an additional exit route to shareholders when shares are undervalued or thinly traded;
- to enhance consolidation of stake in the company;
- to prevent unwelcome takeover bids;
- to return surplus cash to shareholders;
- to achieve optimum capital structure;
- to support share price during periods of sluggish market condition;
- to serve the equity more efficiently.

Sections 68, 69 and 70 of Companies Act, 2013 provides for buy back of shares.
According to section 68(1) of the Companies Act 2013, a company may purchase its own shares or other specified securities (referred to as buy-back) out of—
(a)its free reserves;
(b)the securities premium account; or
(c)the proceeds of the issue of any shares or other specified securities:
However, no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

**Conditions for buy back:**

According to section 68(2), following conditions must be satisfied in order to buy-back the shares.

i) must be authorized by its articles;

ii) a special resolution has been passed at a general meeting of the company authorizing the buy-back, but the same is not required when:

i) the buy-back is 10% or less of the total paid-up equity capital and free reserves of the company; and

ii) such buy-back has been authorized by the Board by means of a resolution passed at its meeting;

iii) the buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company. But in case of Equity Shares, the same shall be taken as 25% of paid up equity capital only.

iv) Debt equity ratio should be 2:1, where: Debt is aggregate of secured and unsecured debts owed by the after buy-back and Equity: is aggregate of the paid-up capital and its free reserves:

v) all the shares or other specified securities for buy-back are fully paid-up;

vi) If shares or securities are listed, buy back will be in accordance with the regulations made by the Securities and Exchange Board in this behalf; and

vii) the buy-back in respect of unlisted shares or other specified securities is in accordance with Share Capital and Debentures Rules, 2014.

viii) No offer of buy-back shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

**Explanatory Statement - Section 68(3):**

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

a) a full and complete disclosure of all material facts;

b) the necessity for the buy-back;

c) the class of shares or securities intended to be purchased under the buy-back;

d) the amount to be invested under the buy-back; and

e) the time-limit for completion of buy-back.

As per the rules, following more details is to be included in the Explanatory Statement:

f) the date of the board meeting at which the proposal for buy-back was approved by the board of directors of the company;

g) the number of securities that the company proposes to buy-back;

h) the method to be adopted for the buy-back;

i) the price at which the buy-back of shares or other securities shall be made;

j) the basis of arriving at the buy-back price;

k) the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;
l) shareholding:
   i) the aggregate shareholding of the promoters and of the directors of the promoter, where the
      promoter is a company and of the directors and key managerial personnel as on the date of the
      notice convening the general meeting;
   ii) the aggregate number of equity shares purchased or sold by persons mentioned in sub-clause (i)
      during a period of twelve months preceding the date of the board meeting at which the buy-back
      was approved and from that date till the date of notice convening the general meeting;
   iii) the maximum and minimum price at which purchases and sales referred to in sub-clause (ii) were
        made along with the relevant date;

m) if the persons mentioned in l(i) intend to tender their shares for buy-back –
   i) the quantum of shares proposed to be tendered;
   ii) the details of their transactions and their holdings for the last twelve months prior to the date of
       the board meeting at which the buy-back was approved including information of number of
       shares acquired, the price and the date of acquisition;

n) a confirmation that there are no defaults subsisting in repayment of deposits, interest payment
   thereon, redemption of debentures or payment of interest thereon or redemption of preference shares
   or payment of dividend due to any shareholder, or repayment of any term loans or interest payable
   thereon to any financial institution or banking company;

o) a confirmation:
   i) that the Board of directors have made a full enquiry into the affairs and prospects of the company
      and that they have formed the opinion- general meeting is convened there shall be no grounds on
      which the company could be found unable to pay its debts;
   ii) as regards its prospects for the year immediately following that date, that, having regard to their
       intentions with respect to the management of the company’s business during that year and to the
       amount and character of the financial resources which will in their view be available to the
       company during that year, the company shall be able to meet its liabilities as and when they fall
       due and shall not be rendered insolvent within a period of 1 year from that date; and
   iii) the directors have taken into account the liabilities (including prospective and contingent
        liabilities), as if the company were being wound up under the provisions of the Companies Act,
        2013

p) a report addressed to the Board of directors by the company’s auditors stating that-
   i) they have inquired into the company’s state of affairs;
   ii) the amount of the permissible capital payment for the securities in question is in their view
       properly determined;
   iii) that the audited accounts on the basis of which calculation with reference to buy back is done is
       not more than six months old from the date of offer document; and
   iv) the Board of directors have formed the opinion as specified in point ‘o’ on reasonable grounds
       and that the company, having regard to its state of affairs, shall not be rendered insolvent within a
       period of one year from that date.
**Other Conditions for Buy back**

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board. **Section 68(4)**

- The buy-back can be from:
  a) from the existing shareholders or security holders on a proportionate basis;
  b) from the open market;
  c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity. **Section 68(5)**

- Before making such buy-back, file with the Registrar, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, Form No. SH.9 may be prescribed and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board **Section 68(6)**.

- Company shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back **Section 68(7)**.

- Where a company completes a buy-back of its shares or other specified securities, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares or other specified securities within a period of six months except by way of:
  a) a bonus issue or
  b) in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

- Company shall maintain a register in Form No. SH.10 of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities. The register of shares or securities bought-back shall be maintained at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorized by the board in this behalf. The entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

- A company shall, after the completion of the buy-back under this section, file with the Registrar a return in Form No. SH.11 containing such particulars relating to the buy-back within thirty days of such completion. There shall be annexed to the return, a certificate in Form No. SH.15 signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder.

- If a company makes any default in complying with the provisions of this section, 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.
Transfer of certain sums to capital redemption reserves account (section 69)
Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet. The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Prohibition on buy back in following circumstances: (section 70)
No company shall directly or indirectly purchase its own shares or other specified securities—

a) through any subsidiary company including its own subsidiary companies;
b) through any investment company or group of investment companies; or

c) if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company. Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of:

a) Sections 92: Annual Return
b) Section 123: Declaration and Payment of Dividend
c) Section 127: Failure to pay Dividend
d) Section 129: Failure to give True and Fair Statement

ISSUE OF BONUS SHARES
Unlike 1956 Act, conditions are specified for issue of Bonus shares under 2013 Act which are made applicable to all companies. Accordingly, issue of fully paid-up bonus shares can be made out of its free reserves or the securities premium account or capital redemption reserve account. However, company cannot issue bonus shares by capitalizing revaluation reserves.

According to Section 63 of the Companies Act 2013, a company may issue fully paid-up bonus shares to its members, in any manner out of—

i. its free reserves;
ii. the securities premium account; or
iii. the capital redemption reserve account.

However, no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares unless—

a) it is authorised by its articles;
b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

f) The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same. (rule 14 of Companies (share capital and debentures) rules, 2014)

The bonus shares shall not be issued in lieu of dividend.

Further issue of capital

Provisions relating to further issue of capital are made applicable to all types of companies i.e. even private companies have to comply with these provisions for any further issue of capital. This extension to private companies is to ensure that the shareholders are consulted and their opinion considered for issue of shares by special resolution. Pricing of a preferential issue of shares by a company shall be determined by a Registered Valuer.

Amounts received as share application money by private companies also will not be available for use until it allotment of shares Shelf prospectus (i.e. prospectus in respect of which securities are issued for subscription in one or more issues without the issue of a further prospectus) can be issued by classes of companies to be prescribed by Regulations of SEBI.

EMPLOYEE STOCK OPTION SCHEME

**Meaning:** As per section 2(37) of the Companies Act, 2013 “employees’ stock option” means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a predetermined price. ESOP or employee stock option plan refers to a basket of instruments and incentive schemes that find favour with the new upward mobile salary class and which are used to motivate, reward, remunerate and hold on to achievers.

**Issue of Employee Stock Options:** A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines, shall offer shares to its employees under this scheme after complying of following requirements:

The issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution. For the purpose of above statement the word “Employee” means a permanent employee of the company who has been working in India or outside India; or a director of the company, but excluding an independent director; or an employee as defined in 1(a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company, excluding-

(a) an employee who is a promoter or a person belonging to the promoter group; or

(b) a director who either himself or through his relative or through any body-corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

The company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution-

a) the total number of stock options to be granted;

b) identification of classes of employees entitled to participate in the ESOP;

c) the appraisal process for determining the eligibility of employees to the ESOP;
d) the requirements of vesting and period of vesting;
e) the maximum period within which the options shall be vested;
f) the exercise price or the formula for arriving at the same;
g) the exercise period and process of exercise;
h) the Lock-in period, if any;
i) the maximum number of options to be granted per employee and in aggregate
j) the method which the company shall use to value its options;
k) the conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct;
l) the specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and
m) a statement to the effect that the company shall comply with the applicable accounting standards.

The companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.

The approval of shareholders by way of separate resolution shall be obtained by the company in case of-

- grant of option to employees of subsidiary or holding company; or
- grant of option to identified employees, during any one year, equal to or exceeding one percent of the issued capital of the company at the time of grant of option.

The company may by special resolution, vary the terms of ESOP not yet exercised by the employees. The notice for passing special resolution for variation of terms of ESOP shall disclose full details of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation.

There shall be a minimum period of one year between the grant of options and vesting of option. However, in a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required (i.e; 1 year)

(a) The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.
(b) The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.

The amount, payable by the employees, at the time of grant of option-

- may be forfeited by the company if the option is not exercised by the employees within the exercise period; or
- the amount may be refunded to the employees if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme.

**Other Conditions**
(a) The option granted to employees shall not be transferable.
(b) The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.

(c) Subject to clause (d), no person other than the employees to whom the option is granted shall be entitled to exercise the option.

(d) In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.

(e) In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacity shall vest in him on that day.

(f) In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.

The Board of directors, shall, inter alia, disclose in the Directors’ Report for the year, the following details of the Employees Stock Option Scheme:

(a) options granted;

(b) options vested;

(c) options exercised;

(d) the total number of shares arising as a result of exercise of option;

(e) options lapsed;

(f) the exercise price;

(g) variation of terms of options;

(h) money realized by exercise of options;

(i) total number of options in force;

(j) employee wise details of options granted to:

i. key managerial personnel;

ii. any other employee who receives a grant of options in any one year of option amounting to five percent or more of options granted during that year.

iii. identified employees who were granted option, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;

The company shall maintain a Register of Employee Stock Options in Form No. SH.6 and shall forthwith enter therein the particulars of option granted to employees under a scheme of ESOP subject to above conditions. The Register of Employee Stock Options shall be maintained at the registered office of the company or such other place as the Board may decide. The entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

Where the equity shares of the company are listed on a recognized stock exchange, the Employees Stock Option Scheme shall be issued, in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.
Issue of Sweat equity shares

Notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:—

(a) the issue is authorised by a special resolution passed by the company;
(b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
(c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and
(d) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank pari passu with other equity shareholders.

Right Shares

Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;
iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;
(b) to employees under a scheme of employees’ stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or
(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.

Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company: Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.
Issue of preference shares

A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue under section 55 of the Companies Act 2013. No company limited by shares shall, can issue any preference shares which are irredeemable.

A company may issue preference shares for a period exceeding 20 years but not exceeding 30 years for infrastructure projects (Specified in Schedule VI). However, it is subject to redemption of minimum 10% of such preference shares per year from the twenty-first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

Redemption of preference shares

The preference shares can be redeemed only when they are fully paid up-
- out of the profits of the company which would otherwise be available for dividend or
- out of the proceeds of a fresh issue of shares made for the purposes of such redemption.

Capital Redemption Reserve Account

If preference shares are proposed to be redeemed out of the profits of the company, a sum equal to the nominal amount of the shares to be redeemed, shall be transferred to a reserve called the Capital Redemption Reserve Account out of the profits of the company and the provisions of this Act relating to reduction of share capital of a company shall apply as if the Capital Redemption Reserve Account were paid-up share capital of the company.

The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Premium on redemption of preference shares

a) For the companies whose financial statements comply with the accounting standards as prescribed under section 133, the premium payable on redemption shall be provided out of the profits of the company, before the shares are redeemed.

b) For redemption of any preference shares issued on or before the commencement of 2013 Act, the premium payable on redemption shall be provided out of the profits of the company, or out of the company’s securities premium account, before such shares are redeemed.

c) For the companies whose financial statements need not comply with the accounting standards as prescribed under section 133, the premium payable on redemption shall be provided out of the profits of the company, or out of the company’s securities premium account, before such shares are redeemed.

Underwriting of shares

Underwriting Commission

The consideration payable to the underwriters for underwriting the issue of shares or debentures of a company is called underwriting commission. Such a commission is paid at a specified rate on the issue price of the whole of the shares or debentures underwritten whether or not the underwriters are called upon to take up any shares or debentures. Thus, the underwriters are paid for the risk they bear in the placing of shares before the public. Underwriting commission may be in addition to brokerage.

Payment of Underwriting Commission

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether
absolute or conditional, subject to the following conditions which are prescribed under Companies (Prospectus and Allotment of Securities) Rules, 2014:

(a) the payment of such commission shall be authorized in the company’s articles of association;

(b) the commission may be paid out of proceeds of the issue or the profit of the company or both;

(c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent (2.5%) of the price at which the debentures are issued, or as specified in the company’s articles, whichever is less;

(d) the prospectus of the company shall disclose -
   • the name of the underwriters;
   • the rate and amount of the commission payable to the underwriter; and
   • the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.

(e) there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;

(f) a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates. The company is free to negotiate lower rates with underwriters.
2 DEBENTURES

REDEMPTION OF DEBENTURES

Introduction
Redemption of debentures refers to the discharge of liability in respect of the debentures issued by a company. According to Section 71 (1) of the Companies Act, 2013, a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. According to Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014, the company shall not issue secured debentures, unless it complies with the following conditions, namely:- An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue. Provided that a company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty years.

Therefore, for secured debentures, the date of Redemption of debenture shall not exceed 10 years from the date of issue. A company engaged in the setting up of infrastructure projects may issue secured debentures upto redemption period of thirty years.

Creation of debenture redemption reserve account
Section 71(4) states that when debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

Rule 18(7) of Companies (Share Capital and Debentures) Rules, 2014 prescribes the following conditions.

The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below-

(a) the Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;

(b) the company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:-

(i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.

(ii) For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1997, ‘the adequacy’ of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

(iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities), Regulations 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies.
unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of debentures.

(c) Every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-

(i) in deposits with any scheduled bank, free from any charge or lien;
(ii) in unencumbered securities of the Central Government or of any State Government;
(iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;
(iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;
(v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen per cent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;

(d) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.

(e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.
Introduction
There is no legal obligation for sole proprietorship and partnership firm to prepare final accounts, but companies have statutory obligations to keep proper books of account and to prepare its final accounts every year in the manner as prescribed in the Companies Act. Chapter IX, sections 128 to 138 of the Companies Act, 2013 deals with the legal provisions relating to the Accounts of Companies. These sections including Schedule II and III were brought into force from 1st April 2014. The relevant rules pertaining to these provisions have also been notified. All these relevant provisions/schedules and rules will be applicable for the financial years commencing on or after 1st April 2014. It is clarified that in respect of financial years that commenced earlier than 1st April 2014, shall be governed by the relevant provisions/schedules and rules of the Companies Act, 1956.

Financial Year
“Financial year”, in relation to any company or body corporate, means the period ending on the 31st day of March every year. This requirement in case of a company or body corporate, existing on the commencement of 2013 Act, is to be complied within a period of 2 years from commencement of 2013 Act. – Where a company has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up.

Financial statements
1956 Act does not define the term “Financial Statement”. 2013 Act defines the term “financial statement” in relation to a company to include:

(i) a balance sheet as at the end of the financial year;
(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and
(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv): Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

Preparation and Presentation of Financial Statements
Section 129 of the Companies Act 2013 governs the preparation and presentation of financial statements of the company.

(1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III.

- the items contained in such financial statements shall be in accordance with the accounting standards.
- nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of
company for which a form of financial statement has been specified in or under the Act governing such class of company.

- the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose-

  a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;
  b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;
  c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;
  d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

According to the rules for the purposes of sub-section (1) of section 129, the class of companies as may be notified by the Central Government from time to time, shall mandatorily file their financial statements in Extensible Business Reporting Language (XBRL) format and the Central Government may specify the manner of such filing under such notification for such class of companies. The term ‘Extensible Business Reporting Language’ means a standardized language for communication in electronic form to express, report or file financial information by companies under this rule.

(2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

(3) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2).

- The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries. According to the rules the statement containing the salient feature of the financial statement of a company’s subsidiary or subsidiaries, associate company and joint venture shall be in Form 9.1.

- Further as per the rules the Consolidation of financial statements of the company shall be made in accordance with the Accounting Standards, subject however, to the requirement that if under such Accounting Standards, consolidation is not required for the reason that the company has its immediate parent outside India, then such companies will also be required to prepare Consolidated Financial Statements in the manner and format as specified under Schedule III to the Act.

(4) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements.

(5) Without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.
(6) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors 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 five lakh rupees, or with both.

Explanation.—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.
SCHEDULE III OF THE COMPANIES ACT, 2013

Introduction

According to Section 129 of the Companies Act 2013, all the companies registered under this Act will have to present its financial statements in Schedule III of the Act. The Schedule III of the Companies Act 2013 has been formulated to keep pace with the changes in the economic philosophy leading to privatization and globalization and consequent desired changes/reforms in the corporate financial reporting practices. It deals with the Form of Balance sheet, Statement of Profit and Loss and disclosures to be made therein and it applies uniformly to all the companies registered under the Companies Act, 2013, for the preparation of financial statements of an accounting year. It has several new features like:

- A vertical format for presentation of balance sheet with classification of Balance Sheet items into current and non-current categories.
- A vertical format of Statement of Profit and Loss with classification of expenses based on nature.
- Elimination the concept of “Schedules” and such information is now to be furnished in terms of “Notes to Accounts”.
- It does not contain any specific disclosure for items included in Schedule VI under the head, “Miscellaneous Expenditure”. As per AS-16 borrowing cost and discount or premium relating to borrowing could be amortized over loan period. Further, share issue expenses, discount on shares, discount/ premium on borrowing, etc. are excluded from As-26. These items be amortized over period of benefit i.e., normally 3-5 years. The draft guidance note issued by ICAI suggests that unamortized portion of such expenses be shown under the head “Other Current/Non-current Assets” depending on whether the amount will be amortized in the next 12 months or thereafter.
- Debit Balance of Statement of Profit & Loss A/c will be disclosed under the head, Reserves & Surplus as the negative figure.
- No change in the format of cash flow statement as per revised schedule and therefore its preparation continue to be as per AS-3 on cash flow statement.
- It gives prominence to Accounting Standards (AS) i.e. in case of any conflict between the AS and the Schedule, AS shall prevail.

GENERAL INSTRUCTIONS for the preparation of balance sheet and profit and loss account

- The Schedule III sets out the minimum requirements for disclosure on the face of the Balance Sheet, and the Statement of Profit and Loss (hereinafter referred to as “Financial Statements”) and Notes.

- Line items, sub-line items and sub-totals shall be presented as an addition or substitution on the face of the Financial Statements when such presentation is relevant to an understanding of the company’s financial position or performance or to cater to industry/sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act or under the Accounting Standards.

- This means new line items or sub items can be added or substituted on the face of the Financial Statements when such presentation is relevant to an understanding of the company’s financial position or performance or to cater to industry/sector-specific disclosure requirements.
- to cater to industry/sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act and Accounting Standards.

- Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head or sub-head or any changes, inter se, in the financial statements or statements forming part thereof, the same shall be made and the requirements of this Schedule shall stand modified accordingly.

- The disclosure requirements specified in this Schedule are in addition to and not in substitution of the disclosure requirements specified in the Accounting Standards prescribed under the Companies Act, 2013. Additional disclosures specified in the Accounting Standards shall be made in the notes to accounts or by way of additional statement unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act shall be made in the notes to accounts in addition to the requirements set out in this Schedule.

- Notes to accounts shall contain information in addition to that presented in the Financial Statements and shall provide where required:
  - narrative descriptions or disaggregations of items recognised in those statements; and
  - information about items that do not qualify for recognition in those statements.

- Each item on the face of the Balance Sheet and Statement of Profit and Loss shall be cross-referenced to any related information in the notes to accounts. In preparing the Financial Statements including the notes to accounts, a balance shall be maintained between providing excessive detail that may not assist users of financial statements and not providing important information as a result of too much aggregation.

- Depending upon the turnover of the company, the figures appearing in the Financial Statements may be rounded off as given below:

<table>
<thead>
<tr>
<th>Turnover</th>
<th>Rounding off</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) less than one hundred crore rupees</td>
<td>To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.</td>
</tr>
<tr>
<td>(b) one hundred crore rupees or more</td>
<td>To the nearest lakhs, millions or crores, or decimals thereof.</td>
</tr>
</tbody>
</table>

Once a unit of measurement is used, it shall be used uniformly in the Financial Statements.

1. Except in the case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including notes shall also be given.
2. For the purpose of this Schedule, the terms used herein shall be as per the applicable Accounting Standards.

**Presentation of Balance Sheet**

A Balance sheet is a statement of the financial position of an enterprise as at a given date, which exhibits its assets, liabilities, capital, reserves and other account balances at their respective book values.

**Key features of Balance Sheet**

1) The Schedule III permits only Vertical form of presentation.
2) It uses “Equity and Liabilities” and “Assets” as headings.
3) All assets and liabilities classified into current and non-current and presented separately on the face of the Balance Sheet.
4) Number of shares held by each shareholder holding more than 5% shares now needs to be disclosed.
5) Details pertaining to aggregate number and class of shares allotted for consideration other than cash, bonus shares and shares bought back will need to be disclosed only for a period of five years immediately preceding the Balance Sheet date.
6) Any debit balance in the Statement of Profit and Loss will be disclosed under the head “Reserves and surplus.” Earlier, any debit balance in Profit and Loss Account carried forward after deduction from uncommitted reserves was required to be shown as the last item on the asset side of the Balance Sheet.
7) Specific disclosures are prescribed for Share Application money. The application money not exceeding the capital offered for issuance and to the extent not refundable will be shown separately on the face of the Balance Sheet. The amount in excess of subscription or if the requirements of minimum subscription are not met will be shown under “Other current liabilities.”
8) The term “sundry debtors” has been replaced with the term “trade receivables.” ‘Trade receivables’ are defined as dues arising only from goods sold or services rendered in the normal course of business. Hence, amounts due on account of other contractual obligations can no longer be included in the trade receivables.
9) It requires separate disclosure of “trade receivables” outstanding for a period exceeding six months from the date the bill/invoice is due for payment.”
10) “Capital advances” are specifically required to be presented separately under the head “Loans & advances” rather than including elsewhere.
11) Tangible assets under lease are required to be separately specified under each class of asset. In the absence of any further clarification, the term “under lease” should be taken to mean assets given on operating lease in the case of lessor and assets held under finance lease in the case of lessee.
12) Under the Schedule III, other commitments also need to be disclosed.

The format of balance sheet as given in Part I of Schedule III of the Companies Act 2013 is given below.

**Key features Statement of Profit and Loss**

1) The name of ‘Profit and Loss Account’ has been changed to “Statement of Profit and Loss”.

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2) This format of Statement of Profit and Loss does not mention any appropriation item on its face. Further, ‘below the line’ adjustments to be presented under “Reserves and Surplus” in the Balance Sheet.

3) Any item of income or expense which exceeds one per cent of the revenue from operations or Rs. 100,000 (earlier 1% of total revenue or Rs. 5,000), whichever is higher, needs to be disclosed separately.

4) In respect of companies other than finance companies, revenue from operations need to be disclosed separately as revenue from (a) sale of products, (b) sale of services and (c) other operating revenues.

5) Net exchange gain/loss on foreign currency borrowings to the extent considered as an adjustment to interest cost needs to be disclosed separately as finance cost.

6) Break-up in terms of quantitative disclosures for significant items of Statement of Profit and Loss, such as raw material consumption, stocks, purchases and sales have been simplified and replaced with the disclosure of “broad heads” only. The broad heads need to be decided based on materiality and presentation of true and fair view of the financial statements.

**True and fair view of financial statements**

According to section 128 (1) of the Companies Act 2013, every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company.

Further section 129(1) of the Companies Act 2013, states that the financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form provided for different class or classes of companies in Schedule III. It also provides also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose——

(a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;

(b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;

(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

Thus, the Companies Act requires that the profit and loss account must exhibit a true and fair view of the profit earned or loss suffered by the company during the period for which the account has been prepared. The term true and fair has not been defined nor had it been the subject of any judicial decision. But in order to show a true and fair view financial statement (Statement of Profit and Loss and Balance Sheet) should not mislead the user about the financial health of the organisation.
Treatment of special items under Companies Act 2013

Although, the general principles for preparing the final accounts of a company are same as that of partnership firms and sole proprietorship concerns, some special points peculiar to a company are described below.

Managerial Remuneration

The section 197(1) of Companies Act 2013 puts a maximum limit on the total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year. The remuneration shall not exceed eleven per cent of the net profits of that company for the financial year computed as laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

(1) The company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent of the net profits of the company, subject to the provisions of Schedule V.

Further that, except with the approval of the company in general meeting,—

(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five percent of the net profits of the company

(ii) If there is more than one managing director; or whole-time director or manager remuneration shall not exceed ten per cent of the net profits to all such directors and manager taken together;

(iii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed one per cent of the net profits of the company, if there is a managing or whole-time director or manager;

(iv) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed three per cent of the net profits of the company, if there is no managing or whole-time director or manager;

(2) The percentages aforesaid shall be exclusive of any fees payable to directors for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.

(3) If in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager, by way of remuneration except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government. However, the company can pay fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.

(4) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles, by a special resolution, passed by the company in general meeting and the remuneration payable to a
director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity except for-

a) the services rendered are of a professional nature; and
b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (I) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

(5) A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

(6) An independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. Thus, under the Companies Act 2013, independent directors of a public company can be paid commission other than sitting fees and reimbursement of expenses for attending the meeting provided if the shareholders approval is available for the same.

(7) The net profits for the purposes of this section shall be computed as referred to in section 198.

(8) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and the company cannot waive it and until such sum is refunded, hold it in trust for the company.

(9) The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless permitted by the Central Government.

(10) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company’s memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.

(11) Every listed company shall disclose in the Board’s report, the ratio of the remuneration of each director to the median employee’s remuneration and such other details as may be prescribed.

(12) Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel: Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration. Thus any premium paid on the insurance policy to cover the risk for managing director or other directors or Company Secretary shall not form the part of the above limit.
(13) Any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board’s report.

(14) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

PART II of Schedule V

1. **Remuneration payable by companies having profits:** Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

2. **Remuneration payable by companies having no profit or inadequate profit without Central Government approval:**

   Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below:—

   (A):

<table>
<thead>
<tr>
<th>Where the effective capital is</th>
<th>Limit of yearly remuneration payable shall not exceed (Rupees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Negative or less than 5 crores</td>
<td>30 lakhs</td>
</tr>
<tr>
<td>2. 5 crores and above but less than 42 lakhs</td>
<td>100 crores</td>
</tr>
<tr>
<td>3. 100 crores and above but less than 60 lakhs</td>
<td>250 crores</td>
</tr>
<tr>
<td>4. 250 crores and above</td>
<td>60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores:</td>
</tr>
</tbody>
</table>

   The above limits shall be doubled if the resolution passed by the shareholders is a special resolution and for a period less than one year, the limits shall be pro-rated.

   (B) In the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, — 2.5% of the current relevant profit. The above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

**Calculation of net profits for determining managerial remuneration**

The calculation of net profits of a company in any financial year for the purpose of determining managerial remuneration under section 197 is described in the section 198 of the Companies Act 2013.
According to section 198(2), credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

According to section 198(3), credit shall not be given for the following sums, namely:

a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;

b) profits on sales by the company of forfeited shares;

c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;

d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:

Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value:

e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

According to section 198(4), the following sums shall be deducted, namely:

a) all the usual working charges;

b) directors’ remuneration;

c) bonus or commission paid or payable to any member of the company’s staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;

d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;

e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;

f) interest on debentures issued by the company;

g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;

h) interest on unsecured loans and advances;

i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;

j) outgoings inclusive of contributions made under section 181;

k) depreciation to the extent specified in section 123;

l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;

m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;

n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);
o) debts considered bad and written off or adjusted during the year of account.

According to section 198(5), in making the computation aforesaid, the following sums shall not be deducted, namely:—

a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);

b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);

c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;

d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

DECLARATION OF DIVIDEND

The term “Dividend” refers to that part of the profits of a company which is distributed by the company among its shareholders by way of return on investments made by the shareholders in the shares, of the company. In other words, dividend is nothing but the distribution of divisible or distributable profits of a company among the holders of its shares. Dividend is paid by a company to its shareholders on the basis of number of shares held by them and the rights attaching to the various classes of shares.

Section 123 of the Companies Act 2013 provides following conditions for the payment of dividend.

a) No dividend shall be declared or paid by a company for any financial year except—

- out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of Schedule II or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of Schedule II and remaining undistributed, or out of both; or
- out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

b) The company has to transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company, before the declaration of any dividend in any financial year.

c) No dividend shall be declared or paid by a company from its reserves other than free reserves.

d) In case of inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with the Companies (Declaration and Payment of Dividend) Rules, 2014. In the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves subject to the fulfillment of the following conditions, namely:—

- The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year:
Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

- The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
- The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
- The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.
- No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year the loss or depreciation, whichever is less, in previous years is set off against the profit of the company for the year for which dividend is declared or paid.

e) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

f) In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

g) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

h) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash. Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company. Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.

i) A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

In the TABLE –F of the Companies Act, following provisions are mentioned for Dividends and Reserve.

- The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.
- The Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.
- The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks fit as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalizing dividends; and pending such application, may, at the like discretion, either be employed in the business
of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, thinks fit.

- The Board may also carry forward any profits which it may consider necessary not to divide, without setting them aside as a reserve.

**PROVISION FOR DEPRECIATION**

Section 123 of the Companies Act 2013 provides that the depreciation shall be provided out of the profits of the company in accordance with the provisions of Schedule II.

Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. The depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its residual value. The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the number of production or similar units expected to be obtained from the asset by the entity. The term depreciation includes amortisation.

Companies whose financial statements comply with the accounting standards prescribed for such class of companies under section 133, shall have the useful life of an asset indicated in Part C of Schedule II. In respect of other companies the useful life of an asset shall not be longer than the useful life and the residual value shall not be higher than that prescribed in Part C.

For intangible assets, the provisions of the Accounting Standards shall apply.

The useful lives of various tangible assets are given in Schedule II of the Companies Act, 2013.
4

CONSOLIDATION OF ACCOUNTS

Holding and subsidiary company

Meaning and Definition

According to section 2(46) of the Companies Act, 2013, “holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

According to section 2(87) of the Companies Act, 2013, “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 share capital 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. 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;
(d) “layer” in relation to a holding company means its subsidiary or subsidiaries.

The definition of a subsidiary as per the 2013 Act includes associates and joint ventures.

Explanation with Example

Suppose, H is holding company of S because 51% shares are of H in S. S is also of holding Company of R because S have power to appoint the board of directors of R Company and then H is also holding Company of R.

Preparation of Consolidated Financial Statements as Per the Companies Act

The Companies Act 1956 Act does not require preparation of consolidated financial statements (‘CFS’). However, listed entities are required to prepare CFS (as per SEBI regulations). The Companies Act 2013 has made preparation of consolidated accounts mandatory for companies having one or more subsidiaries or associates or joint ventures. According to sub section 3 of the section 129 of the Companies Act, 2013, where a company has one or more subsidiaries or associates or joint ventures, it shall, in addition to its financial statements for the financial year, prepare a consolidated financial statement of the company and of all the subsidiaries or associates or joint ventures in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement.

The requirement to prepare CFS is largely consistent with internationally accepted practices. However, internationally, such requirements apply only to listed companies; and unlisted intermediate entities are generally exempted. The existing Indian and international accounting practices do not require preparation of CFS when the Company has investments only in associates and joint ventures (no subsidiaries).
According to the rules, the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries or associates or joint venture in the Form 9.1.

The Consolidation of financial statements of the company shall be made in accordance with the Accounting Standards, subject however, to the requirement that if under such Accounting Standards, consolidation is not required for the reason that the company has its immediate parent outside India, then such companies will also be required to prepare Consolidated Financial Statements in the manner and format as specified under Schedule III to the Act.

**Schedule III of the Companies Act, 2013**

The Schedule III of the Companies Act, 2013, provides certain general instructions for the preparation of consolidated financial statements.

1. Accordingly, where a company is required to prepare Consolidated Financial Statements, i.e., consolidated balance sheet and consolidated statement of profit and loss, the company shall *mutatis mutandis* follow the requirements of Schedule III of the Companies Act, 2013, as applicable to a company in the preparation of balance sheet and statement of profit and loss. In addition, the consolidated financial statements shall disclose the information as per the requirements specified in the applicable Accounting Standards including the following:
   
   (i) Profit or loss attributable to “minority interest” and to owners of the parent in the statement of profit and loss shall be presented as allocation for the period.
   
   (ii) “Minority interests” in the balance sheet within equity shall be presented separately from the equity of the owners of the parent.

2. In Consolidated Financial Statements, the following shall be disclosed by way of additional information:

<table>
<thead>
<tr>
<th>Name of the entity in the</th>
<th>Net Assets, <em>i.e.</em>, total assets minus total liabilities</th>
<th>Share in profit or loss</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As % of consolidated net assets</td>
<td>Amount</td>
</tr>
<tr>
<td>Parent Subsidiaries Indian</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Foreign</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minority Interests in all subsidiaries Associates (Investment as per the equity method)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3. All subsidiaries, associates and joint ventures (whether Indian or foreign) will be covered under consolidated financial statements.

4. An entity shall also disclose the list of subsidiaries or associates or joint ventures which have not been consolidated in the consolidated financial statements along with the reasons of not consolidating.
ACCOUNTING STANDARDS

Introduction

Accounting Standards have assumed great significance in today’s environment, which is constantly evolving and changing. Accounting Standards act as pillars of sound financial reporting system of a country, which is an integral and important part of good corporate governance and provides the shareholders and other stakeholders’ useful information about the entity to make their economic and financial decisions. To strengthen the financial reporting system existing in the country, Accounting Standards are formulated or revised from time to time.

Meaning of Accounting Standards

Accounting Standards (ASs) are written policy documents issued by expert accounting body or by government or any other regulatory body. Accounting Standards covers the aspects of recognition, measurements, treatment, presentation and disclosure of accounting transactions in the financial statements. Thus, accounting standards are guidelines for financial accounting, as how firms prepare and present its business income and expense, assets and liabilities.

According to section 2(2) of the Companies Act 2013 “accounting standards” means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133.

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Objective of Accounting Standards

- To harmonise different accounting policies and practices in used in a country.
- To reduce the accounting alternatives in the preparation of financial statements
- To ensure comparability of financial statements of different enterprises
- To call for disclosures beyond that required by the law.

Formation of the Accounting Standards Board

The Institute of Chartered Accountants of India (ICAI) constituted the Accounting Standards Board (ASB) on 21st April, 1977) to harmonise the diverse accounting policies and practices in use in India. ASB of the ICAI has been issuing accounting standards since then. It has issued 32 Accounting Standards and 29 Accounting Standards Interpretations so far. “AS 8- Accounting for Research and Development” has been withdrawn, therefore there are 31 Accounting Standards in effect currently. ASB takes into consideration the applicable laws, customs, usages and business environment prevailing in the country. It also gives due consideration to International Accounting Standards (IASs) and tries to integrate them, to the extent possible, in the light of conditions and practices prevailing in India.
Composition of the Accounting Standards Board
The composition of the ASB is fairly broad-based and ensures participation of all interest-groups in the standard-setting process. Apart from the elected members of the Council of the ICAI nominated on the ASB, the following are represented on the ASB:

(i) Nominee of the Central Government representing the Department of Company Affairs on the Council of the ICAI
(ii) Nominee of the Central Government representing the Office of the Comptroller and Auditor General of India on the Council of the ICAI
(iii) Nominee of the Central Government representing the Central Board of Direct Taxes on the Council of the ICAI
(iv) Representative of the Institute of Cost and Works Accountants of India
(v) Representative of the Institute of Company Secretaries of India
(vi) Representatives of Industry Associations (1 from Associated Preface to the Statements of Accounting Standards 3 Chambers of Commerce and Industry (ASSOCHAM), 1 from Confederation of Indian Industry (CII) and 1 from Federation of Indian Chambers of Commerce and Industry (FICCI)
(vii) Representative of Reserve Bank of India
(viii) Representative of Securities and Exchange Board of India
(ix) Representative of Controller General of Accounts
(x) Representative of Central Board of Excise and Customs
(xi) Representatives of Academic Institutions (1 from Universities and 1 from Indian Institutes of Management)
(xii) Representative of Financial Institutions
(xiii) Eminent professionals co-opted by the ICAI (they may be in practice or in industry, government, education, etc.)
(xiv) Chairman of the Research Committee and the Chairman of the Expert Advisory Committee of the ICAI, if they are not otherwise members of the Accounting Standards Board
(xv) Representative(s) of any other body, as considered appropriate by the ICAI

Objectives and Functions of the Accounting Standards Board
The following are the objectives of the Accounting Standards Board:

(i) To conceive of and suggest areas in which Accounting Standards need to be developed.
(ii) To formulate Accounting Standards with a view to assisting the Council of the ICAI in evolving and establishing Accounting Standards in India.
(iii) To examine how far the relevant International Accounting Standard/International Financial Reporting Standard can be adapted while formulating the Accounting Standard and to adapt the same.
(iv) To review, at regular intervals, the Accounting Standards from the point of view of acceptance or changed conditions, and, if necessary, revise the same.
(v) To provide, from time to time, interpretations and guidance on Accounting Standards.
(vi) To carry out such other functions relating to Accounting Standards.

The main function of the ASB is to formulate Accounting Standards so that such standards may be established by the ICAI in India. While formulating the Accounting Standards, the ASB will take into consideration the applicable laws, customs, usages and business environment prevailing in India.
The ICAI, being a full-fledged member of the International Federation of Accountants (IFAC), is expected, inter alia, to actively promote the International Accounting Standards Board’s (IASB) pronouncements in the country with a view to facilitate global harmonisation of accounting standards. Accordingly, while formulating the Accounting Standards, the ASB will give due consideration to International Accounting Standards (IASs) issued by the International Accounting Standards Committee (predecessor body to IASB) or International Financial Reporting Standards (IFRSs) issued by the IASB, as the case may be, and try to integrate them, to the extent possible, in the light of the conditions and practices prevailing in India.

The Accounting Standards are issued under the authority of the Council of the ICAI. The ASB has also been entrusted with the responsibility of propagating the Accounting Standards and of persuading the concerned parties to adopt them in the preparation and presentation of financial statements. The ASB will provide interpretations and guidance on issues arising from Accounting Standards. The ASB also reviews the Accounting Standards at periodical intervals and, if necessary, revise the same.

**Scope of Accounting Standards**

(i) The Accounting Standards which are issued are in conformity with the provisions of the applicable laws, customs, usages and business environment in India. However, if a particular Accounting Standard is found to be not in conformity with law, the provisions of the said law will prevail and the financial statements should be prepared in conformity with such law.

(ii) The Accounting Standards by their very nature cannot and do not override the local regulations which govern the preparation and presentation of financial statements in the country. However, the ICAI will determine the extent of disclosure to be made in financial statements and the auditor's report thereon. Such disclosure may be by way of appropriate notes explaining the treatment of particular items. Such explanatory notes will be only in the nature of clarification and therefore need not be treated as adverse comments on the related financial statements.

(iii) The Accounting Standards are intended to apply only to items which are material. Any limitations with regard to the applicability of a specific Accounting Standard will be made clear by the ICAI from time to time. The date from which a particular Standard will come into effect, as well as the class of enterprises to which it will apply, will also be specified by the ICAI. However, no standard will have retroactive application, unless otherwise stated.

(iv) In formulation of Accounting Standards, the emphasis would be on laying down accounting principles and not detailed rules for application and implementation thereof.

**Procedure for Issuing an Accounting Standard**

Broadly, the following procedure is adopted for formulating Accounting Standards:

(i) The ASB determines the broad areas in which Accounting Standards need to be formulated and the priority in regard to the selection thereof.

(ii) In the preparation of Accounting Standards, the ASB will be assisted by Study Groups constituted to consider specific subjects.

(iii) The draft of the proposed standard will normally include the following:

- Objective of the Standard,
- Scope of the Standard,
• Definitions of the terms used in the Standard,
• Recognition and measurement principles, wherever applicable,
• Presentation and disclosure requirements.
(iv) The ASB will consider the preliminary draft prepared by the Study Group and if any revision of the draft is required on the basis of deliberations, the ASB will make the same.
(v) The Exposure Draft of the proposed Standard will be issued for comments by the members of the Institute and the public. The Exposure Draft will specifically be sent to specified bodies (as listed above), stock exchanges, and other interest groups, as appropriate.
(vi) After taking into consideration the comments received, the draft of the proposed Standard will be finalised by the ASB and submitted to the Council of the ICAI.
(vii) The Council of the ICAI will consider the final draft of the proposed Standard, and if found necessary, modify the same in consultation with the ASB. The Accounting Standard on the relevant subject will then be issued by the ICAI.
(viii) For a substantive revision of an Accounting Standard, the procedure followed for formulation of a new Accounting Standard, as detailed above, will be followed.
(ix) Subsequent to issuance of an Accounting Standard, some aspect(s) may require revision which are not substantive in nature. For this purpose, the ICAI may make limited revision to an Accounting Standard. The procedure followed for the limited revision will substantially be the same as that to be followed for formulation of an Accounting Standard, ensuring that sufficient opportunity is given to various interest groups and general public to react to the proposal for limited revision.

Compliance with the Accounting Standards
The Accounting Standards will be mandatory from the respective date(s) mentioned in the Accounting Standard(s). The mandatory status of an Accounting Standard implies that while discharging their attest functions, it will be the duty of the members of the Institute to examine whether the Accounting Standard is complied with in the presentation of financial statements covered by their audit. In the event of any deviation from the Accounting Standard, it will be their duty to make adequate disclosures in their audit reports so that the users of financial statements may be aware of such deviation.

Ensuring compliance with the Accounting Standards while preparing the financial statements is the responsibility of the management of the enterprise. Statutes governing certain enterprises require of the enterprises that the financial statements should be prepared in compliance with the Accounting Standards, e.g., the Companies Act, 2013 and the Insurance Regulatory and Development Authority (Preparation of Financial Statements and Auditor’s Report of Insurance Companies) Regulations, 2000.

Financial Statements cannot be described as complying with the Accounting Standards unless they comply with all the requirements of each applicable Standard.

Applicability of Accounting Standards under Companies Act 2013
Section 129 (1) of the Companies Act, 2013, the financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III: Provided that the items contained in such financial statements shall be in accordance with the accounting standards.
Section 129 (5) of the Companies Act, 2013, without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

According to section 132 (1), the Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.

According to section 132 (2) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

   a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

   b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;

   c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and

Section 133-The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Section 134 (5) of the Companies Act, 2013, prescribes that the Directors’ Responsibility Statement shall state that in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures.

Section 143 (2): The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made there under or under any order made under sub-section (11) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company’s affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

Section 143 (3) The auditor’s report shall also state (e) whether, in his opinion, the financial statements comply with the accounting standards;

International Financial Reporting Standards (IFRS)

IFRS are now becoming the global financial reporting language. The importance of IFRS has grown significantly in the recent times. However the concept of IFRS is not new. Back in the year 1973, the professional accountancy bodies of developed economies such as USA, London, Germany, Japan, France etc. recognised the need to harmonize the accounting principles and standards followed by different countries and formed International Accounting Standards Committee (IASC). IASC is a not for profit corporation incorporated in USA and operates from London. It took the
responsibility of harmonizing accounting practices followed worldwide by issuing International Accounting Standards (IAS). These IAS were adopted by many multinational companies and endorsed by many countries as their own standards. Most of the nations adopted these international standards but modified them according to their situations and environment prevailing in their own country. With the passage of time several country level accounting principles emerged and there were many gaps between these local generally accepted accounting principles and the IAS. So, in the year 2001, international fraternity of accountants decided to revise the whole framework. In 2001, IASC was renamed as International Accounting Standards board (IASB).

The accounting standards issued by IASB are known as International Financial Reporting Standards (IFRS). IFRS is a set of international accounting standards stating how particular types of transactions and other events should be reported in financial statements. IFRS are nothing but principles-based standards, interpretations and the framework adopted by the International Accounting Standards Board (IASB). International Financial Reporting Standards comprise of:

- 9-International Financial Reporting Standards (IFRS)—standards issued after 2001 by IASB.
- 29-International Accounting Standards (IAS)—standards issued before 2001 by IASC which are still valid.
- 11—interpretations issued by Standing Interpretations Committee (SIC) before 2001.

However, in practice IFRS is interchangeably used to denote individual accounting standards issued by IASB as well as International accounting principles collectively. Following are some of the advantages of IFRS:

- Facilitate increased comparability of financial information between companies operating in different countries.
- The financial reporting process would become more transparent.
- The standardization of accounting methodology provides creditors and investors with the ability to analyze businesses around the world using the same financial methods.
- It would also permit international capital to flow more freely.
- It would give investors a better understanding to the financial statements and assess the investment opportunities in other countries.
- It would also benefit the accounting professionals as they will be able to sell their services in the different parts of the world.

All these benefits of IFRS have prompted many countries to pursue convergence of national accounting standards with IFRS. India has also decided to facilitate the convergence of the Indian accounting standards with IFRS and in this direction all existing accounting standards are being revised and converged with corresponding IAS/IFRS. Convergence of entire world towards IFRS would benefit the corporate sector, investors, and regulators and facilitate economic growth as a whole.
EXECUTIVE PROGRAMME
(Old Syllabus)

TAX LAWS

MODULE I- PAPER 3
TAX LAWS

Students appearing in December 2014 Examination shall note that all changes made by Finance Act, 2013 in Service Tax Laws and all the relevant Circulars, Clarifications/Notifications issued by CBEC / Central Government effective six months prior to the date of examination are applicable.

These notifications and circulars are for Service tax which is updated upto 30th June, 2014.
1. **Notification No. 01/2014 - Service Tax, dated 10.01.2014: amendment of notification no. 25/2012 - Service Tax (Mega Exemption Notification), Dated the 20.06.2012**

   In the said notification, in the opening paragraph, in entry 11, in item (a), for the words “district, State or zone”, the words “district, State, zone or Country” shall be substituted.

2. **Notification No. 02/2014 - Service Tax, dated 30.01.2014: amendment of notification no. 25/2012 - Service Tax (Mega Exemption Notification), Dated the 20.06.2012**

   In the said notification, in the paragraph 2, for clause (s), the following shall be substituted, namely:
   
   ‘(s) “governmental authority” means an authority or a board or any other body;
   (i) set up by an Act of Parliament or a State Legislature; or
   (ii) established by Government,
   with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;’.

3. **Notification No. 03/2014-Service Tax, dated 3.02.2014: Regarding levy of service tax on services provided by an authorised person or sub-brokers to the member of a commodity exchange.**

   G.S.R....(E).- Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as ‘the Finance Act’), on services provided by an authorised person or sub-broker to the member of a recognised association or a registered association, in relation to a forward contract, and that such services were liable to service tax under the Finance Act, which was not being levied according to the said practice during the period commencing from the 10th day of September 2004 and ending with the 30th day of June 2012;

   Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the Finance Act, the Central Government hereby directs that the service tax payable on the services provided by an authorised person or sub-broker to the member of a recognised association or a registered association, in relation to a forward contract, shall not be required to be paid in respect of such taxable service on which the service tax was not being levied during the aforesaid period in accordance with the said practice.

4. **Notification No. 04/2014 - Service Tax, dated 17.02.2014: amendment of notification no. 25/2012- Service Tax (Mega Exemption Notification), Dated the 20.06.2012**

   In the said notification, in the opening paragraph,-

   (i) after entry 2, the following entry shall be inserted, namely:–
   “2A. Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation;”;
(ii) after entry 39, the following entry shall be inserted, namely:

“40. Services by way of loading, unloading, packing, storage or warehousing of rice.”.

Circulars in Service Tax

1. Circular No. 175 /01 /2014 – ST, dated 10.01.2014: Regarding Levy of service tax on services provided by a Resident Welfare Association (RWA) to its own members

Service tax on ‘club or association service’ which covers Resident Welfare Association (RWA) was introduced with effect from 16.06.2005, vide section 65(105)(zzze) read with section 65(25a)[(25a) was later renumbered as (25aa)]. Under the positive list approach which was followed prior to 1st July 2012, exemption was available under notification No. 8/2007-ST dated 01.03.2007, if the total consideration received from an individual member by the RWA for the services does not exceed three thousand rupees per month. This notification was rescinded vide notification No. 34/2012-ST dated 20th June 2012, with effect from 1st July, 2012.

Under the negative list approach, with effect from 1st July, 2012, notification No.25/2012-ST [sl.no.28 (c)] provides for exemption to service by a RWA to its own members by way of reimbursement of charges or share of contribution up to five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members.

Certain doubts have been raised regarding the scope of the present exemption extended to RWAs under the negative list approach. These doubts have been examined and clarifications are given below:

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<th>Sl. No.</th>
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<td>1.</td>
<td>(i) In a residential complex, monthly contribution collected from members is used by the RWA for the purpose of making payments to the third parties, in respect of commonly used services or goods [Example: for providing security service for the residential complex, maintenance or upkeep of common area and common facilities like lift, water sump, health and fitness centre, swimming pool, payment of electricity Bill for the common area and lift, etc.]. Is service tax leviable?</td>
<td>Exemption at Sl. No. 28 (c) in notification No. 25/2012-ST is provided specifically with reference to service provided by an unincorporated body or a non-profit entity registered under any law for the time being in force such as RWAs, to its own members. However, a monetary ceiling has been prescribed for this exemption, calculated in the form of five thousand rupees per month per member contribution to the RWA, for sourcing of goods or services from third person for the common use of its members. If per month per member contribution of any or some members of a RWA exceeds five thousand rupees, the entire contribution of such members whose per month contribution exceeds five thousand rupees would be ineligible for the exemption under the said notification. Service tax would then...</td>
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| 2. | (i) Is threshold exemption under notification No. 33/2012-ST available to RWA?  
(ii) Does ‘aggregate value’ for the purpose of threshold exemption, include the value of exempt service? | Threshold exemption available under notification No. 33/2012-ST is applicable to a RWA, subject to conditions prescribed in the notification. Under this notification, taxable services of aggregate value not exceeding ten lakh rupees in any financial year is exempted from service tax. As per the definition of ‘aggregate value’ provided in Explanation B of the notification, aggregate value does not include the value of services which are exempt from service tax. |
| 3. | If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a ‘pure agent’ of its members, is exclusion from value of taxable service available for the purposes of exemptions provided in Notification 33/2012-ST or 25/2012-ST? | In Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the Rule.  
For illustration, where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment in respect of electricity consumed thereon, is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available. However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in these transactions, the exclusion from the value of taxable service would not be available. |
| 4. | Is CENVAT credit available to RWA for payment of service tax? | RWA may avail cenvat credit and use the same for payment of service tax, in accordance with the Cenvat Credit Rules. |
2. Circular No.177/03/2014 – ST, dated 17.02.2014: Regarding Rice—exemptions from service tax

1. Doubts have been raised regarding the scope and applicability of various exemptions available to various activities in relation to rice, under the negative list approach. These doubts have been examined and clarifications are given below:

2. These doubts have arisen in the context of definition of ‘agricultural produce’ available in section 65B(5) of the Finance Act, 1994. The said definition covers ‘paddy’; but excludes ‘rice’. However, many benefits available to agricultural produce in the negative list [section 66D(d)] have been extended to rice, by way of appropriate entries in the exemption notification.

3. Transportation of rice:
   3.1 by a rail or a vessel: Services by way of transportation of food stuff by rail or a vessel from one place in India to another is exempt from service tax vide exemption notification 25/2012-ST dated 20th June, 2012 [entry sl.no.20(i)]; food stuff includes rice.
   3.2 by a goods transport agency: Transportation of food stuff by a goods transport agency is exempt from levy of service tax [exemption notification 25/2012-ST dated 20th June, 2012 [entry sl.no.21(d)]; amending notification 3/2013-ST dated 1st March 2013]. Food stuff includes rice.

4. Loading, unloading, packing, storage and warehousing of rice: Exemption has been inserted in the exemption notification 25/2012-ST dated 20th June, 2012 [entry sl.no.40]; amending notification 4/2014-ST dated 17th February 2014 may be referred.

5. Milling of paddy into rice: When paddy is milled into rice, on job work basis, service tax is exempt under sl.no.30 (a) of exemption notification 25/2012-ST dated 20th June, 2012, since such milling of paddy is an intermediate production process in relation to agriculture.
EXECUTIVE PROGRAMME
(Old Syllabus)

COMPANY LAW

MODULE II- PAPER 4

Please refer the Study Material of Paper Company Law (Module 1, paper 1) of new syllabus at the following link:

https://www.icsi.edu/Docs/Webmodules/Publications/1.%20Company%20Law-Executive.pdf
EXECUTIVE PROGRAMME

(Old Syllabus)

SECURITIES LAWS AND
COMPLIANCES

MODULE II- PAPER 6
1

CAPITAL MARKET INSTRUMENTS

EQUITY SHARES

Equity shares, commonly referred to as ordinary shares also represent the form of fractional ownership in which a shareholder, as a fractional owner, undertakes the maximum entrepreneurial risk associated with a business venture. The holder of such shares is the member of the company and has voting rights.

According to explanation (i) to Section 43 of Companies Act, 2013 “equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital. Section 43 further provides for equity share capital (i) with voting rights, or (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed.

Equity capital and further issues of equity capital by a company are generally based on the condition that they will rank pari passu along with the earlier issued share capital in all respects. However, as regards dividend declared by the company such additional capital shall be entitled to dividend ratably for the period commencing from the date of issue to the last day of the accounting year, unless otherwise specified in the articles or in the terms of the issue.

Important characteristics of equity shares are given below:

- Equity shares, have voting rights at all general meetings of the company. These votes have the affect of the controlling the management of the company.

- Equity shares have the right to share the profits of the company in the form of dividend (cash) and bonus shares.

- However even equity shareholders cannot demand declaration of dividend by the company which is left to the discretion of the Board of Directors.

- When the company is wound up, payment towards the equity share capital will be made to the respective shareholders only after payment of the claims of all the creditors and the preference share capital.

- Equity share holders enjoy different rights as members under the Companies Act, 2013 such as:
  
  (a) The right to vote on every resolution placed before the company – (Section 47)
  (b) The rights to subscribe to shares at the time of further issue of capital by the company (Pre-emptive Right) – (Section 62)
  (c) Right to appoint proxy to attend and vote at the meeting on his behalf – (Section 105)
  (d) Right to receive copy of annual accounts of the Company – (Section 136)
  (e) Right to receive notice of the meeting of members – (Section 101)
  (f) Right to inspection of various statutory registers maintained by the company.
SHARES WITH DIFFERENTIAL VOTING RIGHTS

Section 43(a)(ii) of the Companies Act, 2013, authorized equity share capital with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed by the Government.

Rule 4 of Companies (Share Capital and Debentures) Rules, 2014 prescribes the following conditions for issue of DVRs:

(a) the articles of association of the company authorizes the issue of shares with differential rights;
(b) the issue of shares is authorized by a special resolution passed at a general meeting of the shareholders.

Where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot or a poll at a general meeting;

(c) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
(d) the company having consistent track record of distributable profit for the last three years;
(e) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
(f) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
(g) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or state level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
(h) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act under which such companies being regulated by sectoral regulators.

(i) The explanatory statement to be annexed to the notice of the general meeting should contain the disclosures as mentioned in the rules.

(j) The Board of Directors shall disclose in the Board’s Report for the financial year in which the issue of equity shares with differential rights was completed, the as mentioned in the rules The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

(k) The company shall not convert its existing share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.
PREFERENCE SHARES

According to explanation (ii) to Section 43 of Companies Act, 2013 “preference share capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to –

(a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

(iii) capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:–

(a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

In simple terms, the preference shares are those shares which have rights of preference over equity shares in the case of distribution of dividend and distribution of surplus in the case of winding up. They generally carry a fixed rate of dividend and redeemable after specific period of time. According to Section 55 of the Companies Act, 2013, a Company cannot issues preference shares which are irredeemable.

DEBENTURES

Section 2(30) of the Companies Act, 2013 defines debentures. “Debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

Debenture is a document evidencing a debt or acknowledging it and any document which fulfills either of these conditions is a debenture.

The important features of a debenture are:

1. It is issued by a company as a certificate of indebtedness.
2. It usually indicates the date of redemption and also provides for the repayment of principal and payment of interest at specified date or dates.
3. It usually creates a charge on the undertaking or the assets of the company. In such a case the lenders of money to the company enjoy better protection as secured creditors, i.e. if the company does not pay interest or repay principal amount, the lenders may either directly or through the
debenture trustees bring action against the company to realise their dues by sale of the
assets/undertaking earmarked as security for the debt.

4. Debentures holders does not have any voting rights.

5. Compulsory payment of interest. The interest on debenture is payable irrespective of whether
there are profits made or not.

SWEAT EQUITY SHARES

Section 2 (88) of the Companies Act, 2013 defines “sweat equity shares” means such equity shares
as are issued by a company to its directors or employees at a discount or for consideration, other
than cash, for providing their know-how or making available rights in the nature of intellectual
property rights or value additions,
by whatever name called.

Company issue shares at a discount or for consideration other than cash to selected employees and
directors as per norms approved by the Board of Directors or any committee, like compensation
committee, formed for this purpose. This is based on the know how provided or intellectual property
rights created and given for value additions made by such directors and employees to the company.
It may be noted that the intellectual property right, know how or value additions arise as of now
mainly in the case of Information Technology related companies and Pharmaceutical companies.
Categories of industries which are eligible to issue sweat equity shares have not been indicated by
the Government either in the Act or otherwise.

According to Section 54 of the Companies Act, 2013 a company may issue sweat equity shares of a
class of shares already issued, if the following conditions are fulfilled:

(a) The issue is authorized by a special resolution passed by the company in the general meeting.

(b) The resolution specifies the number of shares, current market price, consideration if any and the
class or classes of directors or employees to whom such equity shares are to be issued.

(c) Not less than one year has elapsed at the date of the issue, since the date on which the company
was entitled to commence business.

(d) The sweat equity shares of a company whose equity shares are listed on a recognised stock
exchange are issued in accordance with the regulations made by SEBI in this regard and if they are
not listed the sweat equity shares are to be issued in accordance with the rule 8 of Companies (Share
Capital and Debenture) Rules, 2014.
Angel fund means a sub-category of Venture Capital Fund under Category I- Alternative Investment Fund that raises funds from angel investors and invests in accordance with the provisions of Chapter III-A of these regulations.

Company with family connection

Company with family connection means:

a. if the angel investor is an individual,
   i. any company which is promoted by such an individual or his relative; or
   ii. any company where the individual or his relative is a director; or
   iii. any company where the person or his relative has control, or shares or voting rights which entitle them to fifteen percent or more of the shares or voting rights in the company.

Explanation I: For the purpose of this clause, "relative" means a person as defined under section 2 (77) of the Companies Act, 2013.

Explanation II: For the purpose of this clause, "control" shall have the same meaning as assigned to it under sub-regulation (1) of regulation 2 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

b. if the angel investor is a body corporate,
   i. any company which is a subsidiary or a holding company of the investor; or
   ii. any company which is part of the same group or under the same management of the investor; or
   iii. any company where the body corporate or its directors/partners have control, or shares or voting rights which entitle them to fifteen percent or more of the shares or voting rights in the company.

Investment in Angel Funds

Angel funds shall only raise funds by way of issue of units to angel investors. An angel fund shall have a corpus of at least ten crore rupees. Angel funds shall accept, up to a maximum period of three years, an investment of not less than twenty five lakh rupees from an angel investor.

Investment by Angel Funds

Angel funds shall invest only in venture capital undertakings which:

(a) have been incorporated during the preceding three years from the date of such investment;
(b) have a turnover of less than twenty five crore rupees;
(c) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds three hundred crore rupees; and
Explanation I: For the purpose of this clause, "industrial group" shall include a group of body corporates with the same promoter(s)/promoter group, a parent company and its subsidiaries, a group of body corporates in which the same person/group of persons exercise control, and a group of body corporates comprised of associates/subsidiaries/holding companies.

Explanation II: For the purpose of this clause, "group turnover" shall mean combined total revenue of the industrial group.

(d) are not companies with family connection with any of the angel investors who are investing in the company.

(2) Investment by an angel fund in any venture capital undertaking shall not be less than fifty lakh rupees and shall not exceed five crore rupees.

(3) Investment by an angel fund in the venture capital undertaking shall be locked-in for a period of three years.

(4) Angel funds shall not invest in associates.

(5) Angel funds shall not invest more than twenty-five per cent of the total investments under all its schemes in one venture capital undertaking:

Provided that the compliance to this sub-regulation shall be ensured by the Angel Fund at the end of its tenure.

**Investment Conditions for AIFs**

Investments by all categories of Alternative Investment Funds shall be subject to the following conditions:-

(a) Alternative Investment Fund may invest in securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and SEBI from time to time;

(b) Co-investment in an investee company by a Manager or Sponsor shall not be on terms more favourable than those offered to the Alternative Investment Fund;

(c) Category I and II Alternative Investment Funds shall invest not more than twenty five percent of the investible funds in one Investee Company;

(d) Category III Alternative Investment Fund shall invest not more than ten percent of the investible funds in one Investee Company;

(e) Alternative Investment Fund shall not invest in associates except with the approval of seventy five percent of investors by value of their investment in the Alternative Investment Fund;

(f) Un-invested portion of the investible funds may be invested in liquid mutual funds or bank deposits or other liquid assets of higher quality such as Treasury bills, CBLOs, Commercial Papers, Certificates of Deposits, etc. till deployment of funds as per the investment objective;

(g) Alternative Investment Fund may act as Nominated Investor as specified in clause (b) of sub-regulation (1) of regulation 106N of the SEBI (ICDR) Regulations, 2009.

**Schemes**

The angel fund may launch schemes subject to filing of a scheme memorandum at least ten working days prior to launch of the scheme with SEBI. Such scheme memorandum shall contain all material information about the investments proposed under such scheme. No scheme of the angel fund shall have more than forty-nine angel investors.
3

INDIAN DEPOSITORY RECEIPTS

RULE 13 OF THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014

These rules are applicable to those companies incorporated outside India, whether they have or have not, or will or will not, establish any place of business in India.

For the purposes of section 390, no company incorporated or to be incorporated outside India, whether the company has or has not established, or may or may not establish, any place of business in India (hereinafter in this rule called ‘issuing company’) shall make an issue of Indian Depository Receipts (IDRs) unless such company complies with the conditions mentioned under this rule, in addition to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India.

ELIGIBILITY FOR ISSUE OF IDRs

Sub-rule 2 stipulates that the issuing company shall not issue IDRs unless-
(a) its pre-issue paid-up capital and free reserves are at least US$ 50 million and it has a minimum average market capitalization (during the last three years) in its parent country of at least US$ 100 million;
(b) it has been continuously trading on a stock exchange in its parent or home country (the country of incorporation of such company) for at least three immediately preceding years;
(c) it has a track record of distributable profits in terms of section 123 of the Act, for at least three out of immediately preceding five years;
(d) It fulfills such other eligibility criteria as may be laid down by the Securities and Exchange Board of India from time to time in this behalf.

PROCEDURE FOR MAKING AN ISSUE OF IDRs

Sub-rule 3 lays down the procedure for making an issue of IDRs. The issuing company shall follow the following procedure for making an issue of IDRs:
(a) the issuing company shall, where required, obtain the necessary approvals or exemptions from the appropriate authorities from the country of its incorporation under the relevant laws relating to issue of capital and IDRs.
(b) issuing company shall obtain prior written approval from SEBI on an application made in this behalf for issue of IDRs along with the issue size.
(c) an application under clause (b) shall be made to SEBI (along with draft prospectus) at least ninety days prior to the opening date of the IDRs issue, in such form, along with such fee and furnishing such information as may be specified by the Securities and Exchange Board of India from time to time:
However, the issuing company shall also file with SEBI, through a Merchant Banker, a due diligence report along with the application under clause (b) in the form specified by SEBI.
(d) SEBI may, within a period of thirty days of receipt of an application under clause (c), call for such further information, and explanations, as it may deem necessary, for disposal of such application and shall dispose the application within a period of thirty days of receipt of further information or explanation.
However, if within a period of sixty days from the date of submission of application or draft prospectus, SEBI specifies any changes to be made in the draft prospectus, the prospectus shall not be filed with SEBI or Registrar of Companies unless such changes have been incorporated therein.

(e) the issuing company shall on approval being granted by the Securities and Exchange Board of India to an application under clause (b), pay to the Securities and Exchange Board of India an issue fee as may be prescribed from time to time by the Securities and Exchange Board of India.

(f) the issuing company shall file a prospectus, certified by two authorized signatories of the issuing company, one of whom shall be a whole-time director and other the Chief Financial Officer, stating the particulars of the resolution of the Board by which it was approved with SEBI and Registrar of Companies, New Delhi before such issue.

However, at the time of filing of said prospectus with the Registrar of Companies, New Delhi, a copy of approval granted by SEBI and the statement of fees paid by the Issuing Company to SEBI shall also be attached.

(g) the prospectus to be filed with SEBI and the Registrar of Companies, New Delhi shall contain the particulars as prescribed in sub-rule (8) and shall be signed by all the whole-time directors of the issuing company, and the Chief Financial Officer.

(h) the issuing company shall appoint an overseas custodian bank, a Domestic Depository and a Merchant Banker for the purpose of issue of IDRs.

(i) the issuing company may appoint underwriters registered with SEBI to underwrite the issue of IDRs.

(j) the issuing company shall deliver the underlying equity shares or cause them to be delivered to an Overseas Custodian Bank and the said bank shall authorize the domestic depository to issue IDRs.

(k) the issuing company shall obtain in-principle listing permission from one or more stock exchanges having nationwide trading terminals in India.

**REGISTRATION OF DOCUMENTS**

Sub-rule 4 provides that the Merchant Banker to the issue of IDRs shall deliver for registration the following documents or information to SEBI and Registrar of Companies at New Delhi, namely:-

(a) instrument constituting or defining the constitution of the issuing company;

(b) the enactments or provisions having the force of law by or under which the incorporation of the Issuing company was effected, a copy of such provisions attested by an officer of the company be annexed;

(c) if the issuing company has established place of business in India, address of its principal office in India;

(d) if the issuing company does not establish a principal place of business in India, an address in India where the said instrument, enactments or provision or copies thereof are available for public inspection, and if these are not in English, a translation thereof certified by a key managerial personnel of the Issuing company shall be kept for public inspection;

(e) a certified copy of the certificate of incorporation of the issuing company in the country in which it is incorporated;

(f) the copies of the agreements entered into between the issuing company, the overseas custodian bank, the Domestic Depository, which shall inter alia specify the rights to be passed on to the IDR holders;

(g) if any document or any portion thereof required to be filed with SEBI or the Registrar of Companies is not in English language, a translation of that document or portion thereof in English, certified by a key managerial personnel of the company to be correct and attested by an authorized
officer of the Embassy or Consulate of that country in India, shall be attached to each copy of the document.

CONDITIONS FOR ISSUE OF PROSPECTUS AND APPLICATION

Sub-rule 5 deals with conditions required to be fulfilled for issue of prospectus which is as under:

(a) No application form for the securities of the issuing company shall be issued unless the form is accompanied by a memorandum containing the salient features of prospectus in the specified form.

(b) An application form can be issued without the memorandum as specified in clause (a), if it is issued in connection with an invitation to enter into an underwriting agreement with respect to the IDRs.

(c) The prospectus for subscription of IDRs of the Issuing company which includes a statement purporting to be made by an expert shall not be circulated, issued or distributed in India or abroad unless a statement that the expert has given his written consent to the issue thereof and has not withdrawn such consent before the delivery of a copy of the prospectus to SEBI and the Registrar of Companies, New Delhi, appears on the prospectus.

(d) The provisions of the Act shall apply for all liabilities for mis-statements in prospectus or punishment for fraudulently inducing persons to invest money in IDRs.

(e) The person(s) responsible for issue of the prospectus shall not incur any liability by reason of any non-compliance with or contravention of any provision of this rule, if-

(i) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(ii) the contravention arose in respect of such matters which in the opinion of the Central Government or SEBI were not material.

PROCEDURE FOR TRANSFER AND REDEMPTION

Sub-rule 6 narrates the procedure for transfer and redemption of IDRS.

(a) A holder of IDRs may transfer the IDRs, may ask the Domestic Depository to redeem them or any person may seek reissuance of IDRs by conversion of underlying equity shares, subject to the provisions of the Foreign Exchange Management Act, 1999, the SEBI Act, 1992, or the rules, regulations or guidelines issued under these Acts, or any other law for the time being in force;

(b) In case of redemption, Domestic Depository shall request the Overseas Custodian Bank to get the corresponding underlying equity shares released in favour of the holder of IDRs for being sold directly on behalf of holder of IDRs, or being transferred in the books of Issuing company in the name of holder of IDRs and a copy of such request shall be sent to the issuing company for information.

(c) A holder of IDRs may, at any time, nominate a person to whom his IDRs shall vest in the event of his death and Form FC-5 may be used for this purpose.

REPATRIATION

Sub-rule 7 provides for repatriation of issue proceeds of IDRS.

(a) The repatriation of the proceeds of issue of IDRs shall be subject to laws for the time being in force relating to export of foreign exchange.

(b) The number of underlying equity shares offered in a financial year through IDR offerings shall not exceed twenty five per cent. of the post issue number of equity shares of the company.

(c) Notwithstanding the denomination of securities of an Issuing company, the IDRs issued by it shall be denominated in Indian Rupees.

(d) The IDRs issued under this Rule shall be listed on the recognized Stock Exchange(s) in India as specified in clause (k) of sub-rule (3) and such IDRs may be purchased, possessed and freely
transferred by a person resident in India as defined in section 2(v) of the Foreign Exchange Management Act, 1999, subject to the provisions of the said Act:

Provided that the IDRs issued by an Issuing company may be purchased, possessed and transferred by a person other than a person resident in India if such Issuing company obtains specific approval from Reserve Bank of India in this regard or complies with any policy or guidelines that may be issued by Reserve Bank of India on the subject matter;

(e) Every issuing company shall comply with such continuous disclosure requirements as may be specified by SEBI in this regard.

(f) On the receipt of dividend or other corporate action on the IDRs as specified in the agreements between the Issuing company and the Domestic Depository, the Domestic Depository shall distribute them to the IDR holders in proportion to their holdings of IDRs.
SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014

Under the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956 (SCRA) and the Depositories Act, 1996, SEBI pursues two streams of enforcement actions i.e. Administrative/Civil or Criminal. Administrative/civil actions include issuing directions such as remedial orders, cease and desist orders, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal. Criminal action involves initiating prosecution proceedings against violators by filing complaint before a criminal court. Consent order is a remedial measure for settling civil proceedings initiated by SEBI.

Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws. Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays.

SEBI vide circular ref no. EFD/ED/Cir-1/2007 dated April 20, 2007 laid down the framework for passing of consent orders and for considering requests for composition of offences under SEBI Act, SC(R) Act and Depositories Act. Again in the year 2012 SEBI with the purpose of providing more clarity on its scope and applicability, partially modified the same.


The said Ordinance provided that SEBI may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may determined by SEBI in accordance with the regulations made under SEBI Act. The said Ordinance further provided that the settlement proceedings shall be conducted in accordance with the procedure specified in the regulations made under SEBI Act. In this direction SEBI also placed a draft consultation paper on SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2013 on its website for public comments.

In the light of the above, SEBI framed SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and notified it vide Circular No. LAD-NRO/GN/2013-14/37/50 dated 09 January, 2014. These regulations will enable the persons who have defaulted on any SEBI laws & civil proceedings have been initiated against them, to settle the proceedings. These regulations do not provide for settling proceedings which are under criminal in nature.

These regulations provides for the involved entity to file settlement plea within 60 days of the show cause notice served to them by SEBI. The charges and related costs would not be considered upon the payment of settlement also in the cases in which the applicant has already been a party to two
earlier settlements. The regulation mentions the minimum amount to be paid by entities, which will vary as per the charges against them. These charges will be highest for the promoters.

The SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014 is divided into VIII chapters and two schedules. Chapter I covers the preliminary definitions part. Chapter II deals with the application for settlement and limitations part. Chapter III stipulates the scope of settlement proceedings, withdrawal of application for settlement, effect of pending application on the specified proceedings etc. Chapter V deals with the terms of settlement like monetary and non-monetary terms, factors to be considered to arrive at the settlement terms, Chapter VI defines the role of the internal committee and high powered advisory committee in order to impart transparency in the process, Chapter VI provides the procedure of settlement before the internal committee and high powered advisory committee, Chapter VII deals with Settlement orders like settlement of proceeding before the adjudicating officer and SEBI or Settlement proceeding pending before tribunal or any court, Rejection of application in certain eventualities and chapter VIII deals with miscellaneous information like confidentiality of information, power to remove difficulties, SEBI’s power to specify procedures, Rescission and savings etc. Schedule I is divided into three parts A, B & C respectively and Schedule II is again divided into seven chapters. The highlights of the Regulations in brief is discussed below:

**Scope of Settlement Proceeding**

Regulation 5 deals with the scope settlement proceedings. It provides that an application for settlement of any specified proceeding shall not be considered, if:

(a) the alleged default was committed within a period of 24 calendar months from the date of the last settlement order where the applicant was a party.
(b) An earlier application with regard to the same alleged default has been rejected;
(c) the applicant has been party to two settlement orders during the period of thirty six calendar months, prior to the date of applications;
(d) the audit or investigation, if any, in respect of any alleged default, is not complete.

The following proceedings are out of the scope of this regulations, i.e. a specified proceeding cannot be settled, if it involves any of the following defaults:

a) defaults involving insider trading and communication of unpublished price sensitive information ;

(b) fraudulent and unfair trade practices including front running, which in the opinion of SEBI are serious and have a market wide impact or have caused substantial losses to or affect the rights of investors in securities, especially retail investors and small shareholders:

*Explanation.* The expression 'front running' means usage of non-public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change;
(c) failure to make an open offer except where the applicant agrees to make the open offer or where SEBI is of the opinion that the making of the open offer would not be beneficial to the shareholders or is infructuous;

(d) defaults or manipulative practices by mutual funds, alternative investment funds, collective investment schemes and their sponsors or asset management companies, collective investment management company, managers, trustees that result in substantial losses to investors, except in cases where the applicant has compensated the investors for the losses, to the satisfaction of SEBI;

(e) failure to redress investor grievances except where the alleged default is with regard to delayed redressal;

(f) failure, by issuers of securities or entities who invite investment, to make material disclosures in offer documents;

(g) raising of monies by issuance of securities or pooling of funds, in violation of securities laws where the remedy is refund of such monies;

(h) non-compliance of notices and summons issued by SEBI or summons issued by the adjudicating officer;

(i) non-compliance of any order or direction passed under the securities laws.

So any civil proceedings apart from above can be brought under these regulations & can be settled.

**Settlement Terms**

Regulation 8 provides for the terms of settlement in monetary as well as non-monetary terms or both. The non-monetary terms may include appropriate directions, such as:

a) Voluntary suspension of certificate of registration or closure of business for a specified period;
(b) Removal from Management;
(c) Direction in the nature of disgorgement, where it is possible to identify the investors who have incurred losses on account of the action or inaction of the applicant;
(d) Debarment of certain individuals from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by SEBI, for specified periods;
(e) Cancellation of securities and reduction in share holding where the securities are issued fraudulently including cancellation of bonus shares received on such securities, if any, and reimbursement of any dividends received, etc;
(f) Voluntary lock-in of securities;
(g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as direction to appoint or retain an independent consultant to review policies and procedures;
(h) Direction to provide enhanced training and education to employees of intermediaries;
(i) Directions relating to internal audit and reporting requirements;
(j) Any other directions that may be issued by SEBI under the securities laws in the interest of the investors.
The amount of settlement will be credited in the Consolidated Fund of India and the legal cost will be included in the general fund of SEBI. The ill-gotten profits made (if any) will be credited in SEBI’s Investor Protection and Education Fund.

**Factors to be considered to arrive at the settlement terms**

Regulation 9 deals with the factors to be considered by SEBI while arriving at the settlement terms, including but not limited to the following:
(a) conduct of the applicant in the investigation;
(b) the role played by the applicant in case the alleged default is committed by a group of persons;
(c) nature, gravity and impact of alleged defaults;
(d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;
(e) whether the alleged default is minor or major in nature;
(f) the extent of amount of harm and/or loss to investors’ and/or gain by the applicant;
(g) processes which have been introduced since the alleged default to minimize future defaults or lapses;
(h) compliance schedule proposed by the applicant;
(i) economic benefits accruing to any person from the non-compliance or delayed compliance;
(j) conditions which are necessary to deter future non-compliance by the same or another person;
(k) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;
(l) whether the applicant has undergone any other enforcement action for the same violation;
(m) any other factors necessary in the facts and circumstances of the case.

**Procedure**

1. The person who wants to have proceedings settled have to make application along with requisite fees.

2. The applicant shall make full & true disclosures.

3. Application should be complete & if not complete it will be returned. The return of application can be resubmitted within 15 days from the day of rejection of application.

4. The Settlement terms include settlement amount &/or non-monetary terms. The Settlement Amount will be calculated in accordance with the guidelines specified in Schedule II of these regulations.

5. The settlement once completed will be published on SEBI website.

6. If there is any non compliance of settlement order then the original proceedings which was settled would be restored.

7. The application may be rejected if applicant refuses to receive or respond to the communications sent by SEBI or non submission or delays the submission of information, document, etc. as required or non appearance before the internal committee on more than one occasion or violates in any
manner the undertaking and waivers specified, or non remittance or delays the payment of settlement amount and/or does not abide by the undertaking and waivers.

SEBI (Procedure for Search and Seizure) Regulations, 2014

The Securities Laws (Amendment) Second Ordinance, 2013 was promulgated on September 16, 2013 conferring explicit powers on the Chairman, SEBI to authorise Investigating Authority or any other officer of SEBI to conduct search and seizure under sub-section (8) of section 11C of the SEBI Act, 1992.

The said Ordinance vide sub-section (9) of section 11C of the SEBI Act, provides that SEBI may make regulations in relation to search and seizure under section 11C of the SEBI Act. A corresponding provision as clause (cc) has also been inserted in sub-section (2) of section 30 of SEBI Act enabling SEBI to frame regulations providing for the procedure to be followed by the authorised officer for search or seizure under sub-section (8) of section 11C of SEBI Act.

In order to exercise the powers of search and seizure at the time of Investigation, harmonious with the rights of the persons who are subjected to search of their person and property, while pursuing the SEBI’s statutory mandate of investor protection, detailed procedures relating to the procedural safeguards during different stages of search and seizure and the rights of those persons subjected to search and the obligations of the authorized persons, SEBI placed a draft regulations titled SEBI (Procedure for Search and Seizure) Regulations, 2013 dated 14.11.2013 and invited comments from the public on the draft regulations.

Keeping the above in perspective, SEBI on January 10, 2014 issued the SEBI (Procedure for Search and Seizure) Regulations, 2014, specifying detailed procedures to be followed at different stages of an investigation. The salient features of the Regulation are as under:

Warrant of Authority

The authorized officer by SEBI is the Investigation authority under these regulations given power to cause search and seizure. If the investigation authority believes that any or all of the grounds specified in Section 11C(8) of the Act exist, he may make a request either in writing or in electronic mode in Form A to the Chairman of the SEBI with the request to issue a warrant of authority specifying the grounds and reasons for multiple execution, if required. In the request the details of the person or enterprise and its building, place, vessel, vehicle or aircraft whose search is required to be authorized.

On receipt of the request from the Authority the Chairman may, after being satisfied that it is necessary to do so, authority the Investigating Authority or any other officer of SEBI as the Authorized Officer by issuing a Warrant of Authority in Form B, duly signed by the Chairman and sealed. The Chairman may authorize multiple execution of the warrant of authority during the period in which it is in force.

Every warrant issued shall remain in force until it is cancelled by the Chairman or until it is executed, or till the expiry of the time limit specified for execution in the warrant of authority, whichever is earlier. A warrant of authority issued to any officer of SEBI shall expire on the date of the order of the transfer of such order. A warrant issued to more than one officer of SEBI, may be executed by all or any one or more of them. The warrant shall be returned to the Chairman after being executed fully along with the seizure memo or if not executed, whether partially or not, within the time authorized, if any, for its execution, on the expiry of such time. The authorized officer shall make an endorsement on the warrant of authority stating as to the powers which have been exercised by him under such authority.
Procedure to search
The following is the procedure in respect of a search:

Relating to witness

- Before making a search, the authorized officer shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched to situate or any other locality if no such inhabitant of the said locality is availing or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do;
- If the authorized officer finds that no witness is available, he shall execute the warrant of authority on the execution being video graphed and the search shall not be invalid on the mere ground that no one has stood as witness to the search;
- No person witnessing the search shall be compelled to be a witness in any quasi judicial proceedings under the securities laws except as and when summoned by SEBI or the authority before whom such proceedings are pending;

Relating to places and buildings

- It shall be lawful for the authorized officer executing the warrant of authority to enter into such buildings or place, to break open any outer or inner door or window of any building or place, whether that of the person to be searched or any other person, if after notification, be cannot otherwise obtain admittance;
- If such building or place is an apartment in actual occupancy of a woman, the authorized Officer shall before entering such place give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open any outer or inner door or window of the apartment and enter it;
- The authorized officer may require any person who is the owner or has the immediate possession or control of any box, locker, safe, almirah or any other receptacle situate in such building, place to open the same and allow access to inspect or examine its contents and where the keys are not available or where such person fails to comply with any such requirement, may cause any action to be taken including the breaking open of such box, locker, safe, almirah or other receptacle which the Authorized Officer may deem necessary for carrying out all or any of the purposes specified under the warrant of authority;
- The Authorized Officer may require, pending the commencement of the search, any person not to remove from such building or place any article or other thing;
- The Authorized Officer may require the service of any police officer or of any officer of the Central Government or State Government or all of them to assist him for all or any of the purposes specified in the Warrant of Authority;
- The Authorized Officer may search, with such assistance, any building or place, authorized to be searched, where such information or documents are expected or believed to be kept;

Relating to vessel, vehicle or aircraft

- The Authorized Officer on production of the warrant of authority to the person in charge of vessel, vehicle or aircraft, shall have the free ingress to vessel, vehicle or aircraft for the execution;
- It shall be lawful for the Authorized Officer to require the person for the time being control of the vehicle, vessel or aircraft to stop any such of them from moving; if it is in move compel them to stop;
- The Authorized Officer shall have the authority to break open any outer or inner door or window of any such of them, if after notification of the authority and purpose and demand of admittance duly made, he cannot obtain otherwise;
- If the same is occupied by a woman who according to custom does not appear in public, the Authorized Officer shall, before entering such of them, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing;
- The authorized officer may require any person who is the owner or has the immediate possession or control of any box, locker, safe, almirah or any other receptacle situate in such of them, place to open the same and allow access to inspect or examine its contents and where the keys are not available or where such person fails to comply with any such requirement, may cause any action to be taken including the breaking open of such box, locker, safe, almirah or other receptacle which the Authorized Officer may deem necessary for carrying out all or any of the purposes specified under the warrant of authority;
- If the same is found unsuitable for the search the Authorized Officer shall require the person in charge to take the same to the place which is considered suitable for the search and require that person to accompany with them;
- The Authorized Officer may require the person in charge of the vessel, vehicle or aircraft not to remove from them any article or other thing, pending the commencement of the search;
- The Authorized Officer may taken the services of the any police officer or any officer of the Central or State Government or all of them to assist him for all or any of the purposes;
- The Authorized officer may search with such assistance the vehicle, vessel or aircraft where such information or documents are expected or believed to be kept.

Search of person

- Any person who has got out of or is about to get into or is in the building, place, vessel, vehicle or aircraft authorized to be searched is suspected that he has secreted any books of account or other documents then the Authorized Officer shall made a search for that person;
- If such a person is a female, the search shall be made by a female officer with strict regard to decency;
- The Authorized Officer may require the services of any police officer or of any officer of the Central or State Government or all of them to assist him in the search.

Search of Computer

- The Authorized Officer, in the process of search may use reasonable measures to access a computer system that the person being searched is carrying or that is in the person’s physical possession or immediate control;
- He may operate any computer or other device or cause any such computer or other devices to be operated by a person accompanying the Authorized Officer; and
- He may require any person to facilitate access, to provide access to the information held in any such computer or other device which can be accessed by the use of that computer or data storage device-
  - To get any password necessary to operate; or
Otherwise to enable to examine the information accessible by the computer in a form in which the information is visible and legible.

**Power of Inspection**

The Authorized Officer if so authorized shall have the power of inspection of the documents found in any place, building, vessel, vehicle and aircraft.

**Power of seizure**

The Authorized Officer shall have the power to seize any such books of account or other documents found as a result of such search, or get the signature of such persons. If it is not practicable to seize he may serve an order in Form C or Form D on the person who has the owner or having the control, part with or otherwise deal with it except with the previous permission of the Authorized Officer and such person shall there upon take such steps as may be necessary for ensuring compliance with the order.

**Seizure Memo**

In the seizure process the Authorized Officer may prepare a seizure memo in the prescribed Form signed by two witnesses, containing a list of all documents seized or copied in the course of such search and of the place in which they were respectively found and verify the inventory of any such documents seized. In seizing the electronic storage media he shall enter in Form F the description of the physical storage media that were seized or copied. The seizure memo shall contain the following details:

- The time of entry into and exit from place, building, vessel, vehicle or aircraft;
- The identity of the persons searched;
- The address of place and building and details of vessel, vehicle or aircraft searched;
- The details of officers present, if any, at the time of seizure;
- The details of other persons present, if any, at the time of seizure;
- The signature of the authorized officer;
- The signature of the witnesses with thump impression and date;
- The description of identification mark, if any, placed by any person from whose possession or control the documents are seized;
- The signature of the owner or the person who is in immediate possession or control of premises, building, vehicle or aircraft, if available therein;
- The signature of the person from whom the seizure is effected.

**Powers of Authorized Officer**

The following are the powers of the Authorized Officer-

- To place identification mark on any books of account or other documents;
- To make or cause to be made extracts or copy of documents of any books of account;
- To record on oath the statement of any person in the presence of two witnesses.

**Obligations of the Authorized Officer**

The Authorized Officer, before executing the warrant of Authority shall-

- Identify himself either by name or by official identification documents;
• Show the warrant of authority to the person concerned;
• Conduct search and seizure in the presence of the witnesses and prepare panchnama as prescribed in Form G;
• Deliver a copy of the seizure memo to any person from whose possession or control the documents are seized;
• Not enter at any place of business or profession after day time;
• Execute the warrant of authority within the time limit prescribed, if any, in the warrant of authority.

Rights of persons under search and persons in charge

The following are the rights of the persons under search and persons in charge-

• To see the warrant of authority and authorized officer and to obtain a copy thereof;
• To verify the identity of the authorized officer and officials assisting him;
• To be present during the search and seizure;
• To put his own mark of identification on the documents seized along with his signature, stamp, seal, etc.,;
• To have copy of document seized or take extracts in the presence of Authorized Officer;
• To have a copy of any statement recorded during search and seizure.

Obligations of persons under search and persons in charge

The following are the obligations on the part of the persons under search and persons in charge-

• Any person in charge of any building, place shall identify any person as may be required;
• Any person in charge of vessel, vehicle or aircraft on demand locate and identify the vessel, vehicle or aircraft;
• Allow the Authorized Officer free ingress and afford all reasonable facilities for a search;
• Stop the vessel or vehicle or stop and cause to be landed any aircraft on communication of the Authorized Officer;
• Bound to disclose the password and such other information in case of computer devices;
• Provide necessary facility to inspect books of account or other documents;
• Identify the locker etc., and to hand over keys of the same to the Authorized Officer;
• No officer shall be prevented from execution of Warrant of Authority.

Safe Custody of seized documents

The seized documents shall be transmitted in safe manner to the place of custody. The Authorized Officer shall hand over the documents seized along with the seizure memo to the Investigating Authority, who shall keep the same in his custody for such period not later than the conclusion of the investigation as he considers necessary. The same shall not be retained more than 180 days from the date of seizure except with the approval of the Chairman. It shall be ensured that records in physical form are not altered, damaged, mutilated and the records in electronic form is not altered or erased. It is also ensured that the seized articles are stored, maintained in suitable physical and environmental conditions.
Return of documents
The Investigating Authority shall return the documents to the person from whom the same were seized. Before returning such documents identification marks are to be recorded. Any person information severable from any documents shall be returned to the person to whom such information relates on a written request being made in this behalf by him.

Protection of Personal Information
The personal information contained in any document seized shall not be divulged to any third person except for the compliance of any law for the time being in force, without the consent of the person to whom the information relates.

Retention of forensic copy
The forensic copy of the data or mirror image of the storage device and any copy thereof may be retained, on being satisfied that such data or image has evidentiary value. Any copy made or generated from any other document may be retained.

Liability for non compliance of obligations
Any intermediary who fails to comply with any of the obligations shall be liable for any one or more of the following actions-

- Adjudication under Section 15HB of SEBI Act;
- Proceedings under chapter V of SEBI (Intermediaries) Regulations, 2008;
- Prosecution under Section 24 of the Act.

Any person other than an intermediary who fails to comply with any of the obligations shall be liable for any one or more of the following actions-

- Adjudication under Section 15HB of SEBI Act;
- Action under Section 11B and Section 11(4) of the Act;
- Prosecution under Section 24 of the Act.
SEBI notified a new set of regulations called the SEBI (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013 (ITP Regulations) and amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 to insert a new “Chapter XC “Listing and Issue of Capital by Small and Medium Enterprises on Institutional Trading Platform without Initial Public Offering”. The provisions relating to ITP Regulations are covered under Regulations 106W to 106ZE.

Key highlights of the Regulations
Under these Regulations, a separate institutional trading platform is available in an SME exchange for listing and trading of specified securities of SMEs for informed investors. Such listing may be availed of without going through a public offering process. In other words, this provides exit options to investors even where the company or the promoters do not require additional capital to be raised from the public. Chapter XB of the ICDR Regulations provides for issuance of specified securities by SMEs on SME exchange. Broadly, an SME was required to make an IPO without having to file the draft offer document with SEBI. Here, SME is defined to mean a public company, including Start-up Company that complies with all the eligibility conditions specified in these Regulations. The main highlights of the regulation are as under:

(i) Eligibility criteria
For SME to be eligible to list its specified securities on the ITP, the following requirements should be satisfied:

(a) The name of promoter, Group Company or director should not appear on the wilful defaulters list of Reserve Bank of India maintained by CIBIL.

(b) There should be no winding up petition against the company admitted by a competent court.

(c) The company, group companies or subsidiaries have not been referred to BIFR within a period of 5 years prior to the date of application for listing;

(d) No regulatory action has been taken against the company, its promoter or directors, by the SEBI, RBI, IRDA, MCA within a period of 5 years prior to the date of application for listing;

(e) The incorporation of the company should be at least one year old and not more than 10 years.

(f) The revenues of the company have not exceeded one hundred crore rupees in any of the previous financial years.

(g) The paid up capital of the company has not exceeded twenty five crore rupees in any of the previous financial years.

(h) The company has at least one full year's audited financial statements, for the immediately preceding financial year at the time of making the listing application.
In addition to above, the company should have received minimum prescribed investment in terms of the specified regulation from any one of the following entities such as Alternative Investment Fund/ Venture Capital Fund/ other category of investors approved by SEBI(ii) Angel Investor, (iii) Registered Merchant Banker,(iv) a QIB, (v) a specialized International Multilateral Agency or domestic agency or a Public Financial Institution, (vi) receipt of finance from a scheduled bank for its project financing or working capital and a period of three years has been elapsed from the date of such financing and the funds so received have been fully utilized.

(ii) **Restriction on further issue of securities**
Listing of specified securities on the ITP cannot be accompanied by any issue of securities to the public in any manner. Further, the SME cannot undertake an IPO while its specified securities are listed on the ITP.

(iii) **Procedure for Listing**
1. Submission of Information Memorandum (IM) as per the prescribed format.
2. The IM should be on the Recognised Stock Exchange website 21 days from date of filing.
3. Recognised Stock Exchange shall grant In-Principle approval.
4. The Principle approval from Recognised Stock Exchange shall be the deemed waiver by SEBI for Section 19(2)(b) (7) of Securities Contract Regulations Act i.e. listing without public offering.

(iv) **Post Issue Conditions for Fund Raising**
1. No other securities of the company shall be listed other than the Specified Securities.
2. No IPO shall be made by the company for listing on ITP.
3. The company may raise capital through private placement or rights issue without an option for renunciation of rights subject to the guidelines mentioned in the notification.

(v) **Minimum Promoter Shareholding and Lock-In**
At least 20 % of the post listed capital shall be held by the promoters at the time of listing which shall be locked-in for a period of three years from date of listing.

(vi) **Exit from Institutional Trading Platform**
1. A company whose specified securities are listed on institutional trading platform may exit from that platform, if:
   (a) Its 90 % of total votes and the majority of non-promoter votes have been cast in favour of such proposal.
   (b) The recognised stock exchange approves such exit.
2. A company whose securities are listed on institutional trading platform shall exit the platform within a period of 18 months upon happening of following event of:
   (a) Its specified securities have been listed on this platform for a period of ten years;
   (b) The company has paid up capital of more than twenty five crore rupees;
   (c) The company has revenue of more than three hundred crore rupees as per the last audited financial statement; and
   (d) The company has market capitalization of more than five hundred crore rupees.
3. A company be delisted and permanently removed from the trading platform on account of non-compliances with various clauses as below:
(a) failure to file periodic filing with stock exchange for more than one year; or
(b) failure to comply with corporate governance norms for more than one year; or
(c) Non-compliance of the condition of listing as may be specified by the recognised stock exchange.

4. In case of a company delisted and permanently removed under the above mentioned non-compliances, no company promoted by the promoters and directors of such delisted company shall be permitted to be listed on ITP for a period of five years from the date of such delisting. Further this provision shall not apply to a company promoted by the independent directors of such delisted company.
6
INVESTOR PROTECTION

PROTECTION OF INVESTORS UNDER COMPANIES ACT, 2013

Acceptance of Deposits

Section 73 - This section provides that no Company shall accept or review deposit under this Act from the public except in a manner provided under Chapter V (Acceptance of Deposits by Companies) of Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 made thereunder.

Sub-section 3 of section 74 lays down that if a company fails to repay the deposit or part thereof or any interest thereon within the time specified under section 74 or such further times as may be allowed by the Tribunal, 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.

In terms of sub-section 4, where a Company fails to repay the deposit or part thereof, or any interest thereon the deposit for concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Rule 21 of Companies (Acceptance of Deposits) Rules, 2014 stipulates that if any company referred to in sub-section (2) of section 73 or any eligible company inviting deposits or any other person contravenes any provisions of these rules for which no punishment is provided in the act, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one , with a further fine which may extend to five thousand rupees for every day after the first day during which the contraventions continue.

Mis-statements in Prospectus

Section 34 deals with criminal liability for mis-statement in prospectus issued by a company.

Section 34: Where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to be mislead, every person who authorises the issue of such prospectus shall be liable for action under section 447.

Section 447: Any person who is found to be guilty of fraud, 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 terms of the imprisonment shall not be less than three years.

Fraudulently inducing persons to invest money
Section 36: Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into-

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for or underwriting, securities;

or

(b) any agreement the purpose or the pretended purpose of which is to secure a profit or any of the parties form the yield of securities or by reference to fluctuations in the value of securities; or

(c) any agreement, for, or with a view to, obtaining credit facilities from any bank or financial institution, shall be liable for action under section 447.

**Personation for acquisitions, etc. of securities**

Section 38: Any person who –

(a) makes or abets making an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

(b) makes or abets making of multiple applications to the company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or

(c) otherwise induces directly or indirectly a company to allot, or register any transfer thereof, securities to him, or to any other person in a fictitious name, shall be liable for action under section 447.

**Non-payment of Dividend**

*Section 123:* This section, inter alia, requires a company who has declared a dividend for any financial year to deposit the amount of such dividend (including interim dividend) in a scheduled bank in a separate account within 5 days from the date of declaration of such dividend.

*Section 124:* This section provides that where a dividend has been declared by a company which has not been paid or claimed within 30 days from the date of such declaration, the company shall within 7 days of expiry of the said period of 30 days transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by a company in this behalf in any scheduled bank to be called the unpaid dividend account.

This section also provide for penalty for non complying with the above requirement and the same by way of interest @ 12% per annum and the interest accruing on the amount of unpaid/unclaimed dividend not transferred to the unpaid dividend account.

*Section 125:* This section provides for establishment of Investors’ Education and Protection Fund by the Central Government. Various types of unpaid/unclaimed amounts of application money/matured deposits/matured debenture etc. are to be credited to the said fund. The said accumulation in this fund are to be utilized for promotion of investors’ awareness and protection of investors’ interests.

Further, if a company fails to comply with any of the requirements of Section 124, 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.

**Transfers and Transmission of Securities**

Regarding transfers and transmissions of securities necessary provisions are available in Section 56, 58, 59 of the Companies Act, 2013. As regards listed companies, the clauses in the listing agreement contain provisions for prompt issue of certificates after effecting transfers.

Failure to comply with the provisions of Companies Act, 2013 can be brought before the Tribunal through an appeal under Section 58 and 59. After hearing the parties the Tribunal may by order direct the company to register the transfer.

**Failure to Send Financial Statements**

*Section 136:* This section provides for the right of a member to obtain copies of Balance-sheet and auditor’s Report.

Sub-section 3 provides that in case of default complying with this requirement, the company shall be liable for a penalty of twenty-five thousand rupees and every officer who is in default shall be liable to a penalty of five thousand rupees.

Besides, Section 436 permits the shareholder to proceed against the company and its officers in a court of law generally for offences committed under the Companies Act including prospectus, abridged prospectus, allotment, listing, transfer of shares, dividend payment etc. committed by the company as well as its officers under various provisions in the Act.

**Protection to Debentureholders**

Section 71 of the Companies Act, 2013 protects the debenture holds and contains stringent penalties for default and also empowers the denture trustee to makes an appeal to the Tribunal.
RESOURCE MOBILISATION IN INTERNATIONAL CAPITAL MARKET

ISSUE OF ADR/GDR

Depository Receipts (DRs) are negotiable securities issued outside India by a Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, London, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded elsewhere are known as Global Depository Receipts (GDRs). In the Indian context, DRs are treated as FDI.

(i) Indian companies can raise foreign currency resources abroad through the issue of FCCB/DR (ADRs/ GDRs), in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India thereunder from time to time.

(ii) A company can issue ADRs / GDRs, if it is eligible to issue shares to person resident outside India under the FDI Scheme. However, an Indian listed company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue ADRs/GDRs.

(iii) Unlisted companies shall be allowed to raise capital abroad without the requirement of prior or subsequent listing in India initially for a period of two years w.e.f 11th October, 2013, subject to the following conditions:

(a) Unlisted companies shall list abroad only on exchanges in IOSCO/FATF compliant jurisdictions or those with which SEBI has signed bilateral agreements;

(b) The Companies shall file a copy of the return which they submit to the proposed exchange/regulators also to SEBI for the purpose of Prevention of Money Laundering Act (PMLA). They shall comply with SEBI’s disclosure requirements in addition to that of the primary exchange prior to the listing abroad;

(c) While raising resources abroad, the listing company shall be fully compliant with the FDI policy in force;

(d) The capital raised abroad may be utilized for retiring outstanding overseas debt or for bona fide operations abroad including for acquisitions;

(e) In case the funds raised are not utilized abroad as stipulated at (d) above, such companies shall remit the money back to India within 15 days from the date of raising of funds and such money shall be parked only in AD Category-1 banks recognized by RBI and may be used domestically;

(f) The ADRs/GDRs shall be issued subject to sectoral cap, entry route, minimum capitalization norms, pricing norms, etc. as applicable as per FDI regulations notified from time to time;

(g) The pricing of such ADRs/GDRs to be issued to a person resident outside India shall be determined in accordance with sub-paragraph (viii) below;
(h) The number of underlying equity shares offered for issuance of ADRs/GDRs to be kept with the local custodian shall be determined upfront and ratio of ADRs/GDRs to equity shares shall be decided upfront based on applicable FDI pricing norms of equity shares of unlisted company;

(i) The unlisted Indian company shall comply with the instructions on downstream investment as notified from time to time;

(j) The criteria of eligibility of unlisted company raising funds through ADRs/GDRs shall be as prescribed by Government of India;

(iv) There are no end-use restrictions except for a ban on deployment / investment of such funds in real estate or the stock market. There is no monetary limit up to which an Indian company can raise ADRs / GDRs.

(v) The ADR / GDR proceeds can be utilised for first stage acquisition of shares in the disinvestment process of Public Sector Undertakings / Enterprises and also in the mandatory second stage offer to the public in view of their strategic importance.

(vi) Voting rights on shares issued under the Scheme shall be as per the provisions of Companies Act, 2013 and in a manner in which restrictions on voting rights imposed on ADR/GDR issues shall be consistent with the Company Law provisions. Voting rights in the case of banking companies will continue to be in terms of the provisions of the Banking Regulation Act, 1949 and the instructions issued by the Reserve Bank from time to time, as applicable to all shareholders exercising voting rights.

(vii) Erstwhile OCBs which are not eligible to invest in India and entities prohibited to buy/sell or deal in securities by SEBI will not be eligible to subscribe to ADRs / GDRs issued by Indian companies.

(viii) The pricing of ADR/GDR issues including sponsored ADRs/GDR should be made at a price determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

(ix) The pricing of sponsored ADRs/GDRs would be determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

PROVISIONS OF COMPANIES ACT, 2013 RELATING TO ISSUE OF GDR


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

Section 41 provides that a company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed.
Companies (Issue of Global Depository Receipts) Rules, 2014

Eligibility to issue depository receipts

Rule 3 lays down that a company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of the Foreign Exchange Management Rules and Regulations.

Conditions for issue of depository receipts

Rule 4 lays down the following conditions to be fulfilled by a company for issue of depository receipts:

(1) The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so.

(2) The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting. Provided that a special resolution passed under section 62 for issue of shares underlying the depository receipts, shall be deemed to be a special resolution for the purpose of section 41 as well.

(3) The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.

(4) The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts.

(5) The company shall appoint a merchant banker or a practising chartered accountant or a practising cost accountant or a practising company secretary to oversee all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practising chartered accountant or practising cost accountant or practising company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company or of the committee of the Board of directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts.

Provided that the committee of the Board of directors referred to above shall have at least one independent director in case the company is required to have independent directors.

Manner and form of depository receipts

Rule 5 deals with the manner and form of issue of depository receipts.

(1) The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform.

(2) The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Central Government or Reserve Bank of India may prescribe or specify from time to time.

(3) The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.
**Voting rights**

Rule 6 provides the provisions for voting rights of depository receipts holder.

(1) A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act.

(2) Until the conversion of depository receipts, the overseas depository shall be entitled to vote on behalf of the holders of depository receipts in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard.

**Proceeds of Issue**

Rule 7 provides that the proceeds of issues of depository receipts shall either be remitted to a bank account in India or deposited in an Indian bank operating abroad or any foreign bank (which is a Scheduled Bank under the Reserve Bank of India Act, 1934) having operations in India with an agreement that the foreign bank having operations in India shall take responsibility for furnishing all the information which may be required and in the event of a sponsored issue of Depository Receipts, the proceeds of the sale shall be credited to the respective bank account of the shareholders.

**Non applicability of certain provisions of the Act**

(1) The provisions of the Act and any rules issued thereunder insofar as they relate to public issue of shares or debentures shall not apply to issue of depository receipts abroad.

(2) The offer document, by whatever name called and if prepared for the issue of depository receipts, shall not be treated as a prospectus or an offer document within the meaning of this Act and all the provisions as applicable to a prospectus or an offer document shall not apply to a depository receipts offer document.

(3) Notwithstanding anything contained under section 88 of the Companies Act, 2013, until the redemption of depository receipts, the name of the overseas depository bank shall be entered in the Register of Members of the company.

**ISSUE OF FOREIGN CURRENCY EXCHANGEABLE BONDS (FCEB) SCHEME, 2008**

In Financial Year 2007-08, the Indian Government notified the Foreign Currency Exchangeable Bonds Scheme, 2008 for the issue of FCEBs. The provisions of the scheme are as under:

**Eligible Issuer:** The Issuing Company shall be part of the promoter group of the Offered Company and shall hold the equity share/s being offered at the time of issuance of FCEB.

**Offered Company:** The Offered Company shall be a listed company, which is engaged in a sector eligible to receive Foreign Direct Investment and eligible to issue or avail of Foreign Currency Convertible Bond (FCCB) or External Commercial Borrowings (ECB).

**Entities not eligible to issue FCEB:** An Indian company, which is not eligible to raise funds from the Indian securities market, including a company which has been restrained from accessing the securities market by the SEBI shall not be eligible to issue FCEB.

**Eligible subscriber:** Entities complying with the Foreign Direct Investment policy and adhering to the sectoral caps at the time of issue of FCEB can subscribe to FCEB. Prior approval of the Foreign
Investment Promotion Board, wherever required under the Foreign Direct Investment policy, should be obtained.

**Entities not eligible to subscribe to FCEB:** Entities prohibited to buy, sell or deal in securities by the SEBI will not be eligible to subscribe to FCEB.

**End-use of FCEB proceeds**

**Issuing Company:**
(i) The proceeds of FCEB may be invested by the issuing company overseas by way of direct investment including in Joint Ventures or Wholly Owned Subsidiaries abroad, subject to the existing guidelines on overseas investment in Joint Ventures / Wholly Owned Subsidiaries.
(ii) The proceeds of FCEB may be invested by the issuing company in the promoter group companies.

Promoter Group Companies: Promoter group companies receiving investments out of the FCEB proceeds may utilize the amount in accordance with end-uses prescribed under the ECB policy.

**End-uses not permitted**

The promoter group company receiving such investments will not be permitted to utilise the proceeds for investments in the capital market or in real estate in India.

**All-in-cost:** The rate of interest payable on FCEB and the issue expenses incurred in foreign currency shall be within the all-in-cost ceiling as specified by Reserve Bank under the ECB policy.

**Pricing of FCEB:** At the time of issuance of FCEB the exchange price of the offered listed equity shares shall not be less than the higher of the following two:

(i) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on the stock exchange during the six months preceding the relevant date; and (ii) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on a stock exchange during the two week preceding the relevant date.

**Average Maturity:** Minimum maturity of FCEB shall be five years. The exchange option can be exercised at any time before redemption. While exercising the exchange option, the holder of the FCEB shall take delivery of the offered shares. Cash (Net) settlement of FCEB shall not be permissible.

**Parking of FCEB proceeds abroad:** The proceeds of FCEB may be retained and / or deployed overseas by the issuing / promoter group companies in accordance with the policy for the ECB or repatriated to India for credit to the borrowers’ Rupee accounts with AD Category I banks in India pending utilization for permissible end-uses. It shall be the responsibility of the issuing company to ensure that the proceeds of FCEB are used by the promoter group company only for the permitted end-uses prescribed under the ECB policy. The issuing company should also submit audit trail of the end-use of the proceeds by the issuing company / promoter group companies to the Reserve Bank duly certified by the designated AD bank.

**Operational Procedure:** Issuance of FCEB shall require prior approval of the Reserve Bank under the Approval Route for raising ECB. The Reporting arrangement for FCEB shall be as per the extant ECB policy.
FCCB AND ORDINARY SHARES (THROUGH DEPOSITORY RECEIPT MECHANISM) SCHEME, 1993

FCCB are governed by the ‘Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993’ as amended from time to time and Notification FEMA No.120/RB-2004 dated July 7, 2004. The issuance of FCCB was brought under the ECB guidelines in August 2005 In addition to the requirements of (i) having the maturity of the FCCB not less than 5 years, (ii) the call & put option, if any, shall not be exercisable prior to 5 years, (iii) issuance of FCCB only without any warrants attached, (iv) the issue related expenses not exceeding 4% of issue size and in case of private placement, shall not exceed 2% of the issue size, etc. as required in terms of Notification FEMA No. 120/RB-2004 dated July 7, 2004, FCCB are also subject to all the regulations which are applicable to ECBs.

Redemption of FCCB

Keeping in view the need to provide a window to facilitate refinancing of FCCB by the Indian companies which may be facing difficulty in meeting the redemption obligations, Designated AD Category - I banks have been permitted to allow Indian companies to refinance the outstanding FCCB, under the automatic route, subject to compliance with the terms and conditions set out hereunder:

i. Fresh ECBs/ FCCB shall be raised with the stipulated average maturity period and applicable all-in-cost being as per the extant ECB guidelines;

ii. The amount of fresh ECB/FCCB shall not exceed the outstanding redemption value at maturity of the outstanding FCCB;

iii. The fresh ECB/FCCB shall not be raised six months prior to the maturity date of the outstanding FCCB;

iv. The purpose of ECB/FCCB shall be clearly mentioned as ‘Redemption of outstanding FCCB’ in Form 83 at the time of obtaining Loan Registration Number from the Reserve Bank;

v. The designated AD - Category I bank should monitor the end-use of funds;

vi. ECB / FCCB beyond USD 500 million for the purpose of redemption of the existing FCCB will be considered under the approval route; and

vii. ECB / FCCB availed of for the purpose of refinancing the existing outstanding FCCB will be reckoned as part of the limit of USD 750 million available under the automatic route as per the extant norms.

Restructuring of FCCB involving change in the existing conversion price is not permissible. Proposals for restructuring of FCCB not involving change in conversion price will, however, be considered under the approval route depending on the merits of the proposal.

EXTERNAL COMMERCIAL BORROWING

Indian Companies are allowed to access funds from the abroad through ECB, FCEBs, Preference share and FCCB. External Commercial Borrowings (ECB) refer to commercial loans in the form of bank loans, buyers’ credit, suppliers’ credit, securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares) availed of from non-resident lenders with a minimum average maturity of 3 years. ECB can be accessed under two routes, viz., (i) Automatic Route and (ii) Approval Route.
ECB for investment in real sector-industrial sector, infrastructure sector-in India, and specified service sectors are under Automatic Route, i.e. do not require Reserve Bank / Government of India approval. In case of doubt as regards eligibility to access the Automatic Route, applicants may take recourse to the Approval Route.

Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) roads including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.

AUTOMATIC ROUTE
The following types of proposals for ECBs are covered under the Automatic Route.

i) Eligible Borrowers
(a) Corporates, including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956), Non-Banking Finance Companies (NBFCs) - Infrastructure Finance Companies (IFCs), NBFCs - Asset Finance companies (AFCs), Small Industries Development Bank of India (SIDBI) except financial intermediaries, such as banks, financial institutions (FIs), Housing Finance Companies (HFCs) and Non-Banking Financial Companies (NBFCs), other than those specifically allowed by Reserve Bank, are eligible to raise ECB. Individuals, Trusts (other than those engaged in Micro-finance activities) and Non-Profit making organizations are not eligible to raise ECB.

(b) Units in Special Economic Zones (SEZ) are allowed to raise ECB for their own requirement. However, they cannot transfer or on-lend ECB funds to sister concerns or any unit in the Domestic Tariff Area (DTA).

(c) NBFCs-IFCs are permitted to avail of ECBs for on-lending to the infrastructure sector as defined under the ECB policy.

(d) NBFCs-AFCs are permitted to avail of ECBs for financing the import of infrastructure equipment for leasing to infrastructure projects.

(e) Non-Government Organizations (NGOs) engaged in micro-finance activities are eligible to avail of ECB.

(f) Micro Finance Institutions (MFIs) engaged in micro finance activities are eligible to avail of ECBs. MFIs registered under the Societies Registration Act, 1860, MFIs registered under Indian Trust Act, 1882, MFIs registered either under the conventional state-level cooperative acts, the national level multi-state cooperative legislation or under the new state-level mutually aided cooperative acts (MACS Act) and not being a co-operative bank, Non-Banking Financial Companies (NBFCs) categorized as ‘Non Banking Financial Company-Micro Finance Institutions’ (NBFC-MFIs) and complying with the norms prescribed as per Circular DNBS.CC.PD.No. 250/03.10.01/2011-12 dated December 02, 2011 and Companies registered under Section 25 of the Companies Act, 2013 and are involved in micro finance activities.

(g) NGOs engaged in micro finance and MFIs registered as societies, trusts and co-operatives and engaged in micro finance (i) should have a satisfactory borrowing relationship for at least 3 years with a scheduled commercial bank authorized to deal in foreign exchange in India and (ii) would
require a certificate of due diligence on ‘fit and proper’ status of the Board/ Committee of management of the borrowing entity from the designated AD bank.

(h) Small Industries Development Bank of India (SIDBI) can avail of ECB for on-lending to MSME sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006.

(i) Corporates in the services sector viz. hotels, hospitals and software sector.

(j) Companies in miscellaneous services sector (only from direct / indirect equity holders and group companies). Companies in miscellaneous services mean companies engaged in training activities (but not educational institutes), research and development activities and companies supporting infrastructure sector. Companies doing trading business, companies providing logistics services, financial services and consultancy services are, however, not covered under the facility).

(k) Holding Companies / Core Investment Companies (CICs) coming under the regulatory framework of the Reserve Bank are permitted to raise ECB for project use in Special Purpose Vehicles (SPVs) provided the business activity of the SPV is in the infrastructure sector where “infrastructure” is defined as per the extant ECB guidelines. The infrastructure project is required to be implemented by the SPV established exclusively for implementing the project and is subject to conditions In case of Holding Companies that come under the Core Investment Company (CIC) regulatory framework of the Reserve Bank, the ECB availed should be within the ceiling of leverage stipulated for CICs and in case of CICs with asset size below Rs. 100 crore, the ECB availed of should be on fully hedged basis.

**ii) Recognised Lenders**

(1) Borrowers can raise ECB from internationally recognized sources, such as (a) international banks, (b) international capital markets, (c) multilateral financial institutions (such as IFC, ADB, CDC, etc.) / regional financial institutions and Government owned development financial institutions, (d) export credit agencies, (e) suppliers of equipments, (f) foreign collaborators and (g) foreign equity holders [other than erstwhile Overseas Corporate Bodies (OCBs).

(2) NGOs engaged in micro finance and MFIs registered as societies, trusts and co-operatives can avail of ECBs from (a) international banks, (b) multilateral financial institutions, (c) export credit agencies (d) overseas organisations and (e) individuals.

(3) NBFC-MFIs will be permitted to avail of ECBs from multilateral institutions, such as IFC, ADB etc./ regional financial institutions/international banks / foreign equity holders and overseas organizations.

(4) Companies registered under Section 25 of the Companies Act,1956 and are engaged in micro finance will be permitted to avail of ECBs from international banks, multilateral financial institutions, export credit agencies, foreign equity holders, overseas organizations and individuals.

(5) A "foreign equity holder" to be eligible as “recognized lender” under the automatic route would require minimum holding of paid-up equity in the borrower company as set out below:

i. For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender (all outstanding ECBs including the proposed one),

ii. For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 4:1(all outstanding ECBs including the proposed one),
ECB from indirect equity holders is permitted provided the indirect equity holding in the Indian company by the lender is at least 51 per cent.

ECB from a group company is permitted provided both the borrower and the foreign lender are subsidiaries of the same parent.

Besides the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet shall be reckoned for the purpose of calculating the ‘equity’ of the foreign equity holder in the term ECB liability-equity ratio. Where there are more than one foreign equity holders in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ECB liability-equity ratio for reckoning quantum of permissible ECB.

For calculating the ‘ECB liability’, not only the proposed borrowing but also the outstanding ECB from the same foreign equity holder lender shall be reckoned.

(6) Overseas organizations and individuals providing ECB need to comply with the following safeguards:

i. Overseas Organizations proposing to lend ECB would have to furnish to the AD bank of the borrower a certificate of due diligence from an overseas bank, which, in turn, is subject to regulation of host-country regulator and adheres to the Financial Action Task Force (FATF) guidelines. The certificate of due diligence should comprise the following (i) that the lender maintains an account with the bank for at least a period of two years, (ii) that the lending entity is organised as per the local laws and held in good esteem by the business/local community and (iii) that there is no criminal action pending against it.

ii. Individual Lender has to obtain a certificate of due diligence from an overseas bank indicating that the lender maintains an account with the bank for at least a period of two years. Other evidence/documents such as audited statement of account and income tax return which the overseas lender may furnish need to be certified and forwarded by the overseas bank. Individual lenders from countries wherein banks are not required to adhere to Know Your Customer (KYC) guidelines are not eligible to extend ECB.

iii) Amount and Maturity

a. The maximum amount of ECB which can be raised by a corporate other than those in the hotel, hospital and software sectors, and corporate in miscellaneous services sector is USD 750 million or its equivalent during a financial year.

b. Corporates in the services sector viz. hotels, hospitals and software sector and miscellaneous services sector are allowed to avail of ECB up to USD 200 million or its equivalent in a financial year for meeting foreign currency and/or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.

c. NGOs engaged in micro finance activities and Micro Finance Institutions (MFIs) can raise ECB up to USD 10 million or its equivalent during a financial year. Designated AD bank has to ensure that at the time of drawdown the forex exposure of the borrower is fully hedged.

d. NBFC-IFCs can avail of ECB up to 75 per cent of their owned funds (ECB including outstanding ECBs) and must hedge 75 per cent of their currency risk exposure.
e. NBFC-AFCs can avail of ECBs up to 75 per cent of their owned funds (ECB including outstanding ECBs) subject to a maximum of USD 200 million or its equivalent per financial year with a minimum maturity of 5 years and must hedge the currency risk exposure in full.

f. SIDBI can avail of ECB to the extent of 50 per cent of their owned funds including the outstanding ECB, subject to a ceiling of USD 500 million per financial year.

g. ECB up to USD 20 million or its equivalent in a financial year with minimum average maturity of three years. An illustration of average maturity period calculation is provided at Annex VI.

h. ECB above USD 20 million or equivalent and up to USD 750 million or its equivalent with a minimum average maturity of five years.

i. ECB up to USD 20 million or equivalent can have call/put option provided the minimum average maturity of three years is complied with before exercising call/put option.

j. All eligible borrowers can avail of ECBs designated in INR from ‘foreign equity holders’ as per the extant ECB guidelines.

k. NGOs engaged in micro finance activities can avail of ECBs designated in INR, from overseas organizations and individuals as per the extant guidelines.

iv) All-in-cost ceilings

All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. The payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost. The all-in-cost ceilings for ECB are reviewed from time to time.

v) End-use

a. ECB can be raised for investment such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects, modernization/expansion of existing production units in real sector - industrial sector including small and medium enterprises (SME), infrastructure sector and specified service sectors, viz. hotel, hospital and software and miscellaneous services sector as given at I(A)(i)(j) above. Infrastructure sector is defined as (a) Energy which will include (i) electricity generation, (ii) electricity transmission, (iii) electricity distribution, (iv) oil pipelines, (v) oil/gas/liquefied natural gas (LNG) storage facility (includes strategic storage of crude oil) and (vi) gas pipelines (includes city gas distribution network); (b) Communication which will include (i) mobile telephony services / companies providing cellular services, (ii) fixed network telecommunication (includes optic fibre / cable networks which provide broadband / internet) and (iii) telecommunication towers; (c) Transport which will include (i) railways (railway track, tunnel, viaduct, bridges and includes supporting terminal infrastructure such as loading / unloading terminals, stations and buildings), (ii) roads and bridges, (iii) ports, (iv) inland waterways, (v) airport and (vi) urban public transport (except rolling stock in case of urban road transport); (d) Water and sanitation which will include (i) water supply pipelines, (ii) solid waste management, (iii) water treatment plants, (iv) sewage projects (sewage collection, treatment and disposal system), (v) irrigation (dams, channels, embankments, etc.) and (vi) storm water drainage system; (e) (i) mining, (ii) exploration and (iii) refining; (f) Social and commercial infrastructure which will include (i) hospitals (capital stock and includes medical colleges and para medical training institutes), (ii) Hotel Sector which will include hotels with fixed capital investment of Rs. 200 crore and above, convention centres with fixed capital investment of Rs. 300 crore and above and three star or higher category classified hotels located outside cities with population of more than
1 million (fixed capital investment is excluding of land value), (iii) common infrastructure for industrial parks, SEZs, tourism facilities, (iv) fertilizer (capital investment), (v) post harvest storage infrastructure for agriculture and horticulture produce including cold storage, (vi) soil testing laboratories and (vii) cold chain (includes cold room facility for farm level pre-cooling, for preservation or storage or agriculture and allied produce, marine products and meat.

b. Overseas Direct Investment in Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/ WOS abroad.

c. Utilization of ECB proceeds is permitted for first stage as well as subsequent stages of acquisition of shares in the disinvestment process to the public under the Government’s disinvestment programme of PSU shares.

d. Interest during Construction (IDC) for Indian companies which are in the infrastructure sector, where “infrastructure” is defined as per the extant ECB guidelines, subject to IDC being capitalized and forming part of the project cost.

e. For lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building by NGOs engaged in micro finance activities.

f. NBFC-IFCs can avail of ECBs only for on-lending to the infrastructure sector as defined under the ECB policy.

g. NBFC-AFCs can avail of ECBs only for financing the import of infrastructure equipment for leasing to infrastructure projects.

h. Maintenance and operations of toll systems for roads and highways for capital expenditure provided they form part of the original project.

i. SIDBI can on lend to the borrowers in the MSME sector for permissible end uses, having natural hedge by way of foreign exchange earnings. SIDBI may on-lend either in INR or in foreign currency (FCY). In case of on-lending in INR, the foreign currency risk shall be fully hedged by SIDBI.

j. Refinancing of Bridge Finance (including buyers’ / suppliers’ credit) availed of for import of capital goods by companies in Infrastructure Sector

k. ECB is allowed for Import of services, technical know-how and payment of license fees. The companies in the manufacturing and infrastructure sectors may import services, technical know-how and payment of license fees as part of import of capital goods subject to certain conditions.

l. ECB for general corporate purposes from direct foreign equity holders by companies in manufacturing, infrastructure, hotels, hospitals and software sector: Eligible borrowers can avail ECB from their direct foreign equity holder company with a minimum average maturity of 7 years for general corporate purposes (which includes working capital) subject to the following conditions:

i. Minimum paid-up equity of 25 per cent should be held directly by the lender;

ii. Such ECBs would not be used for any purpose not permitted under extant the ECB guidelines (including on-lending to their group companies / step-down subsidiaries in India); and Repayment of the principal shall commence only after completion of minimum average maturity of 7 years.

iii. No prepayment will be allowed before maturity.
vii) End-uses not permitted

Other than the purposes specified hereinabove, the borrowings shall not be utilized for any other purpose including the following purposes, namely:

(a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate [investment in Special Purpose Vehicles (SPVs), Money Market Mutual Funds (MMMFs), etc., are also considered as investment in capital markets].

(b) for real estate sector,

(c) for general corporate purpose which includes working capital (other than what has been given at I(A)(v)(l) above) and repayment of existing rupee loans.

Note: The proceeds of the ECBs should not be used for acquisition of land.

viii) Guarantees

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, Financial Institutions and Non-Banking Financial Companies (NBFCs) from India relating to ECB is not permitted.

ix) Security

The choice of security to be provided to the lender/supplier is left to the borrower. However, creation of charge over immoveable assets and financial securities, such as shares, in favour of the overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000 dated May 3, 2000, respectively, as amended from time to time. AD Category - I banks have been delegated powers to convey ‘no objection’ under the Foreign Exchange Management Act (FEMA), 1999 for creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised by the borrower.

x) Parking of ECB proceeds

Borrowers are permitted to either keep ECB proceeds abroad or to remit these funds to India, pending utilization for permissible end-uses.

The proceeds of the ECB raised abroad meant for Rupee expenditure in India, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc. should be repatriated immediately for credit to the borrowers’ Rupee accounts with AD Category I banks in India. In other words, ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilization. The rupee funds, however, will not be permitted to be used for investment in capital markets, real estate or for inter-corporate lending.

ECB proceeds parked overseas can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody’s (b) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above, and (c) deposits with overseas branches / subsidiaries of Indian banks abroad. The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.

The primary responsibility to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts with AD Category- I banks in India is that of the borrower concerned and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under the Foreign Exchange Management Act (FEMA), 1999.
designated AD bank is also required to ensure that the ECB proceeds meant for Rupee expenditure are repatriated to India immediately after drawdown.

**xi) Prepayment**

Prepayment of ECB up to USD 500 million may be allowed by AD banks without prior approval of Reserve Bank subject to compliance with the stipulated minimum average maturity period as applicable to the loan.

**xii) Refinancing of an existing ECB**

The existing ECB may be refinanced by raising a fresh ECB subject to the condition that the fresh ECB is raised at a lower all-in-cost and the outstanding maturity of the original ECB is maintained.

**xiii) Debt Servicing**

The designated AD bank has the general permission to make remittances of installments of principal, interest and other charges in conformity with the ECB guidelines issued by Government / Reserve Bank of India from time to time.

**xiv) Corporates Under Investigation**

All entities against which investigations / adjudications / appeals by the law enforcing agencies are pending may avail of ECBS as per the current norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, Authorised Dealers while approving the proposal shall intimate the concerned agencies by endorsing the copy of the approval letter.

**xv) Procedure**

Borrowers may enter into loan agreement complying with the ECB guidelines with recognised lender for raising ECB under the Automatic Route without the prior approval of the Reserve Bank. The borrower must obtain a Loan Registration Number (LRN) from the Reserve Bank of India before drawing down the ECB.

**APPROVAL ROUTE**

**i) Eligible Borrowers**

The following types of proposals for ECB are covered under the Approval Route:

a. On lending by the EXIM Bank for specific purposes will be considered on a case by case basis.

b. Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government are also permitted to the extent of their investment in the package and assessment by the Reserve Bank based on prudential norms. Any ECB availed for this purpose so far will be deducted from their entitlement.

c. ECB with minimum average maturity of 5 years by Non-Banking Financial Companies (NBFCs) from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects.

d. NBFCs-IFCs are permitted to avail of ECB, beyond 75 per cent of their owned funds (including the outstanding ECBs) for on-lending to the infrastructure sector as defined under the ECB policy.
e. NBFCs-AFCs are permitted to avail of ECB, beyond 75 per cent of their owned funds (including outstanding ECBs) to finance the import of infrastructure equipment for leasing to infrastructure projects.

f. Foreign Currency Convertible Bonds (FCCBs) by Housing Finance Companies satisfying the following minimum criteria: (i) the minimum net worth of the financial intermediary during the previous three years shall not be less than Rs. 500 crore, (ii) a listing on the BSE or NSE, (iii) minimum size of FCCB is USD 100 million and (iv) the applicant should submit the purpose / plan of utilization of funds.

g. Special Purpose Vehicles, or any other entity notified by the Reserve Bank, set up to finance infrastructure companies / projects exclusively, will be treated as Financial Institutions and ECB by such entities will be considered under the Approval Route.

h. Multi-State Co-operative Societies engaged in manufacturing activity and satisfying the following criteria i) the Co-operative Society is financially solvent and ii) the Co-operative Society submits its up-to-date audited balance sheet.

i. SEZ developers can avail of ECBs for providing infrastructure facilities within SEZ, as defined in the extant ECB policy (as given at I(A)(v)(a) above).

j. Developers of National Manufacturing Investment Zones (NMIZs) can avail of ECB for providing infrastructure facilities within SEZ, as defined in the extant ECB policy (as given at I(A)(v)(a) above).

k. Eligible borrowers under the automatic route other than corporates in the services sector viz. hotel, hospital and software can avail of ECB beyond USD 750 million or equivalent per financial year.

l. Corporates in the services sector viz. hotels, hospitals, and software sectors and in miscellaneous services (as given at I(A)(i)(l) above) can avail of ECB beyond USD 200 million or equivalent per financial year. ECB for corporates in miscellaneous services is permitted only from direct / indirect equity holders and group companies Small Industries Development Bank of India (SIDBI) is eligible to avail of ECB for on-lending to MSME sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, beyond 50 per cent of their owned funds, subject to a ceiling of USD 500 million per financial year provided such on-lending by SIDBI shall be to the borrowers’ for permissible end-use and having natural hedge by way of foreign exchange earnings. SIDBI may on-lend either in INR or in foreign currency (FCY). In case of on-lending in INR, the foreign currency risk shall be fully hedged by SIDBI.

m. Low Cost Affordable Housing Projects: Developers/builders / Housing Finance Companies (HFCs) / National Housing Bank (NHB) may avail of ECB for low cost affordable housing projects [refer to para I B (vii) ibid]. Corporates under Investigation: All entities against which investigations / adjudications / appeals by the law enforcing agencies are pending, may avail of ECBs as per the current norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, the Reserve Bank of India while approving the proposal shall intimate the concerned agencies by endorsing the copy of the approval letter.

n. Holding Companies / Core Investment Companies (CICs) coming under the regulatory framework of the Reserve Bank are permitted to raise ECB for project use in Special Purpose Vehicles (SPVs) provided the business activity of the SPV is in the infrastructure sector where
“infrastructure” is defined as per the extant ECB guidelines. The infrastructure project is required to be implemented by the SPV established exclusively for implementing the project and is subject to conditions. In case of Holding Companies that come under the Core Investment Company (CIC) regulatory framework of the Reserve Bank, the ECB availed should be within the ceiling of leverage stipulated for CICs and in case of CICs with asset size below Rs. 100 crore, the ECB availed of should be on fully hedged basis.

o. Cases falling outside the purview of the automatic route limits and maturity period as indicated at paragraph I A (iii).

ii) Recognised Lenders

(a) Borrowers can raise ECB from internationally recognised sources, such as (i) international banks, (ii) international capital markets, (iii) multilateral financial institutions (such as IFC, ADB, CDC, etc.)/ regional financial institutions and Government owned development financial institutions, (iv) export credit agencies, (v) suppliers' of equipment, (vi) foreign collaborators and (vii) foreign equity holders (other than erstwhile OCBs). Overseas branches / subsidiaries of Indian banks are not recognised as lenders in case the end use is repayment / refinance of Rupee loans raised from domestic banking system under any of the schemes under the ECB policy.

(b) A "foreign equity holder" to be eligible as “recognized lender” under the approval route would require minimum holding of paid-up equity in the borrower company as set out below:

(i) For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender (all outstanding ECBs including the proposed one);

(ii) For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 7:1 (all outstanding ECBs including the proposed one);

(c) ECB from indirect equity holders provided the indirect equity holding by the lender in the Indian company is at least 51 per cent;

(d) ECB from a group company provided both the borrower and the foreign lender are subsidiaries of the same parent.

Besides the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet shall be reckoned for the purpose of calculating the ‘equity’ of the foreign equity holder in the term ECB liability-equity ratio. Where there are more than one foreign equity holder in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ECB liability-equity ratio for reckoning quantum of permissible ECB.

For calculating the ‘ECB liability’, not only the proposed borrowing but also the outstanding ECB from the same foreign equity holder lender shall be reckoned.

The total outstanding stock of ECBs (including the proposed ECBs) from a foreign equity lender should not exceed seven times the equity holding, either directly or indirectly of the lender (in case of lending by a group company, equity holdings by the common parent would be reckoned).

iii) Amount and Maturity

Eligible borrowers under the automatic route other than corporates in the services sector viz. hotel, hospital, software and miscellaneous services can avail of ECB beyond USD 750 million or equivalent per financial year. Corporates in the services sector viz. hotels, hospitals, software sector
and miscellaneous services are allowed to avail of ECB beyond USD 200 million or its equivalent in a financial year for meeting foreign currency and/ or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.

iv) All-in-cost ceilings

All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee and fees payable in Indian Rupees. The payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost. The all-in-cost ceilings for ECB are reviewed from time to time.

v) End-use

a. ECB can be raised only for investment [such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), implementation of new projects, modernization/expansion of existing production units] in the real sector - industrial sector including small and medium enterprises (SME) and infrastructure sector - in India. Infrastructure sector is as given at I(A)(v)(a) above.

b. Overseas Direct Investment in Joint Ventures (JV)/Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.

c. Interest During Construction (IDC) for Indian companies which are in the infrastructure sector, as defined under the extant ECB guidelines subject to IDC being capitalized and forming part of the project cost.

d. The payment by eligible borrowers in the Telecom sector, for spectrum allocation may, initially, be met out of Rupee resources by the successful bidders, to be refinanced with a long-term ECB, under the approval route, subject to the following conditions:

i. The ECB should be raised within 12 months from the date of payment of the final instalment to the Government;

ii. The designated AD - Category I bank should monitor the end-use of funds;

iii. Banks in India will not be permitted to provide any form of guarantees; and

iv. All other conditions of ECB, such as eligible borrower, recognized lender, all-in-cost, average maturity, etc. should be complied with.

v. ECB should not be raised from overseas branches / subsidiaries of Indian banks.

e. The first stage as well as subsequent stages of acquisition of shares in the disinvestment process to the public under the Government’s disinvestment programme of PSU shares.

f. Repayment of Rupee loans availed of from domestic banking system: Indian companies which are in the infrastructure sector (except companies in the power sector), as defined under the extant ECB guidelines , are permitted to utilise 25 per cent of the fresh ECB raised by them towards refinancing of the Rupee loan/s availed by them from the domestic banking system, subject to the following conditions:

(i) at least 75 per cent of the fresh ECB proposed to be raised should be utilised for capital expenditure towards a 'new infrastructure' project(s)

(ii) in respect of remaining 25 per cent, the refinace shall only be utilized for repayment of the Rupee loan availed of for 'capital expenditure' of earlier completed infrastructure project(s); and
(iii) the refinance shall be utilized only for the Rupee loans which are outstanding in the books of the financing bank concerned.

(iv) ECB should not be raised from overseas branches/subsidiaries of Indian banks.

Companies in the power sector are permitted to utilize up to 40 per cent of the fresh ECB raised by them towards refinancing of the Rupee loan/s availed by them from the domestic banking system subject to the condition that at least 60 per cent of the fresh ECB proposed to be raised should be utilized for fresh capital expenditure for infrastructure project(s).

g. ECB is allowed for Import of services, technical know-how and payment of license fees. The companies in the manufacturing and infrastructure sectors may import services, technical know-how and payment of license fees as part of import of capital goods subject to certain conditions.

h. Bridge Finance: Indian companies which are in the infrastructure sector, as defined under the extant ECB policy are permitted to import capital goods by availing of short term credit (including buyers’/suppliers’ credit) in the nature of ‘bridge finance’, with RBI’s prior approval provided the bridge finance shall be replaced with a long term ECB as per extant ECB guidelines.

i. ECB for working capital for civil aviation sector: Airline companies registered under the Companies Act, 1956 and possessing scheduled operator permit license from DGCA for passenger transportation are eligible to avail of ECB for working capital. Such ECBs will be allowed based on the cash flow, foreign exchange earnings and the capability to service the debt and the ECBs can be raised with a minimum average maturity period of three years.

The overall ECB ceiling for the entire civil aviation sector would be USD one billion and the maximum permissible ECB that can be availed by an individual airline company will be USD 300 million. This limit can be utilized for working capital as well as refinancing of the outstanding working capital Rupee loan(s) availed of from the domestic banking system. ECB availed for working capital/refinancing of working capital as above will not be allowed to be rolled over. The foreign exchange for repayment of ECB should not be accessed from Indian markets and the liability should be extinguished only out of the foreign exchange earnings of the borrowing company. The scheme will be available upto March 31, 2015.

j. ECB for general corporate purposes from direct foreign equity holders: Eligible borrowers can avail ECB under approval route from their direct foreign equity holder company with a minimum average maturity of 7 years for general corporate purposes (which includes working capital) subject to the following conditions:

i. Minimum paid-up equity of 25 per cent should be held directly by the lender;

ii. Such ECBs would not be used for any purpose not permitted under extant the ECB guidelines (including on-lending to their group companies/step-down subsidiaries in India); and

iii. Repayment of the principal shall commence only after completion of minimum average maturity of 7 years. No prepayment will be allowed before maturity.

vi) Repayment of Rupee loans and/or fresh Rupee capital expenditure for companies with consistent forex earnings – USD 10 billion scheme

a) Indian companies in the manufacturing, infrastructure sector and hotel sector (with a total project cost of INR 250 crore or more irrespective of geographical location for hotel sector), can avail of ECBs for repayment of outstanding Rupee loans availed of for capital expenditure from the domestic banking system and/or fresh Rupee capital expenditure provided they are consistent
foreign exchange earners during the past three financial years and not in the default list/caution list of the Reserve Bank of India.

**vi) End-uses not permitted**

Other than the purposes specified hereinabove, the borrowings shall not be utilised for any other purpose including the following purposes, namely:

(a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate except Infrastructure Finance Companies (IFCs), banks and financial institutions eligible.

(b) For real estate.

(c) For and general corporate purpose which includes working capital [except as stated at I(B)(v)(i) and (j)] and repayment of existing Rupee loans.

**vii) Guarantee**

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, financial institutions and NBFCs relating to ECB is not normally permitted. Applications for providing guarantee/standby letter of credit or letter of comfort by banks, financial institutions relating to ECB in the case of SME will be considered on merit subject to prudential norms. With a view to facilitating capacity expansion and technological upgradation in Indian textile industry, issue of guarantees, standby letters of credit, letters of undertaking and letters of comfort by banks in respect of ECB by textile companies for modernization or expansion of textile units will be considered under the Approval Route subject to prudential norms.

**viii) Security**

The choice of security to be provided to the lender / supplier is left to the borrower. However, creation of charge over immovable assets and financial securities, such as shares, in favour of the overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000 dated May 3, 2000 as amended from time to time, respectively. Powers have been delegated to Authorised Dealer Category I banks to issue necessary NOCs under FEMA Regulations.

**ix) Parking of ECB proceeds**

Borrowers are permitted to either keep ECB proceeds abroad or to remit these funds to India, pending utilization for permissible end-uses.

The proceeds of the ECB raised abroad meant for Rupee expenditure in India, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, repayment of rupee loan availed from domestic banks, etc. should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. In other words, ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilization. The rupee funds, however, will not be permitted to be used for investment in capital markets, real estate or for inter-corporate lending.

ECB proceeds parked overseas can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody’s; (b) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above and (c) deposits with overseas branches /
subsidiaries of Indian banks abroad. The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India. The primary responsibility to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts with AD Category-I banks in India is that of the borrower concerned and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under the Foreign Exchange Management Act (FEMA), 1999. The designated AD bank is also required to ensure that the ECB proceeds meant for Rupee expenditure are repatriated to India immediately after drawdown.

**x) Prepayment**

(a) Prepayment of ECB beyond USD 500 million will be considered by the Reserve Bank subject to compliance with the stipulated minimum average maturity period as applicable to the loan, would be considered by the Reserve Bank under the Approval Route.

**xi) Refinancing/rescheduling of an existing ECB**

The cases where the existing ECB is proposed to be refinanced by raising a fresh ECB at a lower all-in-cost are considered under the approval route if the average maturity period of the fresh ECB is more than the residual maturity of the existing ECB.

**xii) Debt Servicing**

The designated AD bank has general permission to make remittances of installments of principal, interest and other charges in conformity with the ECB guidelines issued by Government / Reserve Bank from time to time.

**xiii) Procedure**

Applicants are required to submit an application in form ECB through designated AD bank to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, External Commercial Borrowings Division, Mumbai – 400 001, along with necessary documents.

**xiv) Empowered Committee**

Reserve Bank has set up an Empowered Committee to consider proposals coming under the Approval Route.

**CONVERSION OF ECB INTO EQUITY**

(i) Conversion of ECB into equity is permitted subject to the following conditions:

a. The activity of the company is covered under the Automatic Route for Foreign Direct Investment or Government (FIPB) approval for foreign equity participation has been obtained by the company, wherever applicable.

b. The foreign equity holding after such conversion of debt into equity is within the sectoral cap, if any.

c. Pricing of shares is as per the pricing guidelines issued under FEMA, 1999 in the case of listed/unlisted companies.

d. Conversion of ECB and Lumpsum Fee / Royalty into Equity: In case the ECB liability, denominated in foreign currency and /or import of capital goods, etc. is sought to be converted by the company, it will be in order to apply the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion. Reserve Bank will have no objection if the
borrower company wishes to issue equity shares for a rupee amount less than that arrived at as mentioned above by a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only. The principle of calculation of INR equivalent for a liability denominated in foreign currency as mentioned above shall apply, mutatis mutandis, to all cases where any payables/liability by an Indian company such as, lump sum fees/royalties, etc. are permitted to be converted to equity shares or other securities to be issued to a non-resident subject to the conditions stipulated under the respective Regulations.

(ii) Conversion of ECB may be reported to the Reserve Bank as follows:

a. Borrowers are required to report full conversion of outstanding ECB into equity in the form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in form ECB-2 submitted to the DSIM, RBI within seven working days from the close of month to which it relates. The words "ECB wholly converted to equity" should be clearly indicated on top of the ECB-2 form. Once reported, filing of ECB-2 in the subsequent months is not necessary.

b. In case of partial conversion of outstanding ECB into equity, borrowers are required to report the converted portion in form FC-GPR to the Regional Office concerned as well as in form ECB-2 clearly differentiating the converted portion from the unconverted portion. The words "ECB partially converted to equity" should be indicated on top of the ECB-2 form. In subsequent months, the outstanding portion of ECB should be reported in ECB-2 form to DSIM.
INTRODUCTION

Corporate governance denotes the process, structure and relationship through which the Board of Directors oversees what the management does. It is also about being answerable to different stakeholders.

CII constituted a Committee to recommend a Code of Corporate Governance to be observed by corporates in their functioning. The Committee further recommended a Code popularly known as “Desirable Corporate Governance Code” which defined Corporate Governance as follows:

“Corporate governance deals with laws, procedures, practices and implicit rules that determine a company’s ability to take informed managerial decisions vis-à-vis its claimants – in particular, its shareholders, creditors, customers, the State and employees. There is a global consensus about the objective of ‘good’ corporate governance: maximising long-term shareholder value.”

The Kumar Mangalam Birla Committee Constituted by SEBI has observed that:

“Strong corporate governance is indispensable to resilient and vibrant capital markets and is an important instrument of investor protection. It is the blood that fills the veins of transparent corporate disclosure and high-quality accounting practices. It is the muscle that moves a viable and accessible financial reporting structure.”

N.R. Narayana Murthy Committee on Corporate Governance constituted by SEBI has observed that:

“Corporate Governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company.”

The Institute of Company Secretaries of India has also defined the term Corporate Governance as under:

Good Governance in capital market has always been high on the agenda of SEBI. Corporate Governance is looked upon as a distinctive brand and benchmark in the profile of Corporate Excellence. This is evident from the continuous updation of guidelines, rules and regulations by SEBI for ensuring transparency and accountability. In the process, SEBI had constituted a Committee on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla. The Committee in its report observed that “the strong Corporate Governance is indispensable to resilient and vibrant capital markets and is an important instrument of investor protection. It is the blood that fills the veins of transparent corporate disclosure and high quality accounting practices. It is the muscle that moves a viable and accessible financial reporting structure.”

Based on the recommendations of the Committee, the SEBI had specified principles of Corporate Governance and introduced a new clause 49 in the Listing agreement of the Stock Exchanges in the year 2000. These principles of Corporate Governance were made applicable in a phased manner and all the listed companies with the paid up capital of Rs 3 crores and above or net worth of Rs 25 crores or more at any time in the history of the company, were covered as of March 31, 2003.

SEBI, as part of its endeavour to improve the standards of corporate governance in line with the needs of a dynamic market, constituted another Committee on Corporate Governance under the
Chairmanship of Shri N.R. Narayana Murthy to review the performance of Corporate Governance and to determine the role of companies in responding to rumour and other price sensitive information circulating in the market in order to enhance the transparency and integrity of the market. The Committee in its Report observed that “the effectiveness of a system of Corporate Governance cannot be legislated by law, nor can any system of Corporate Governance be static. In a dynamic environment, system of Corporate Governance needs to be continually evolved.”

With a view to promote and raise the standards of Corporate Governance, SEBI on the basis of recommendations of the Committee and public comments received on the report and in exercise of powers conferred by Section 11(1) of the SEBI Act, 1992 read with section 10 of the Securities Contracts (Regulation) Act 1956, revised the existing clause 49 of the Listing agreement vide its circular SEBI/MRD/SE/31/2003/26/08 dated August 26, 2003.

SEBI vide circular number SEBI/CFD/ DIL/CGL/1/2004/12/10 dated October 29, 2004 again revised the existing Clause 49 of the Listing Agreement directing all the Stock Exchanges to amend the Listing Agreement by replacing the existing Clause 49 of the Listing Agreement. As per the Circular, the provisions of the Clause 49 were to be implemented as per the schedule of implementation given below:

(a) For entities seeking listing for the first time, at the time of seeking in-principle approval for such listing.

(b) For existing listed entities which were required to comply with Clause 49 which is being revised i.e. those having a paid up share capital of Rs. 3 crores and above or net worth of Rs. 25 crores or more at any time in the history of the company, by April 1, 2005.

However noticing that large number of companies were not in the state of preparedness to be fully compliant with the requirements of revised Clause 49 of the listing agreement, SEBI allowed more time to corporates to conform to Clause 49 of the listing agreement and extended the date for ensuring compliance with the Clause 49 of the listing agreement to December 31, 2005.

The Companies Act, 2013 was enacted on August 30, 2013 which provides for a major overhaul in the Corporate Governance norms for all companies. The rules pertaining to Corporate Governance were notified on March 27, 2014. The requirements under the Companies Act, 2013 and the rules notified there under would be applicable for every company or a class of companies (both listed and unlisted) as may be provided therein. SEBI reviewed the provisions of the Listing Agreement in this regard with the objectives to align with the provisions of the Companies Act, 2013, adopt best practices on corporate governance and to make the corporate governance framework more effective. SEBI vide its circular dated April 17, 2014, revised new clause 49 in alignment with Companies Act, 2013.

The revised Clause 49 would be applicable to all listed companies with effect from October 01, 2014. However, the provisions of Clause 49(VI)(C) as given in Part-B shall be applicable to top 100 listed companies by market capitalisation as at the end of the immediate previous financial year.

For other listed entities which are not companies, but body corporate or are subject to regulations under other statutes (e.g. banks, financial institutions, insurance companies etc.), the Clause 49 will apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant regulatory authorities. The Clause 49 is not applicable to Mutual Funds.

HIGHLIGHTS OF CLAUSE 49

COMPOSITION OF BOARD OF DIRECTORS
As per clause 49 (II) (A) of the Listing Agreement, the Board of Directors of the company shall have an optimum combination of executive and non-executive directors with at least one women director. Further—

– not less than 50 per cent of the board of directors shall comprise of non-executive directors;
– the number of independent directors would depend on whether the chairman is executive or non-executive;
– if the Board has a Non-Executive Chairman, at least one third of the Board should comprise of independent directors;
– if the Board has an Executive Chairman, at least half of the Board should comprise of independent directors.

If the non-executive Chairman is a promoter or is related to promoters or persons occupying management positions at the board level or at one level below the board, at least one-half of the board of the company should consist of independent directors. The expression “related to any promoter” means:

(a) If the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
(b) If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

**Definition of Independent Director**

(i) **Under Listing Agreement**

‘Independent director’ shall mean a non-executive director, other than a nominee director of the company:

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
(c) apart from receiving director’s remuneration, has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
(e) who, neither himself nor any of his relatives –

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of –

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company;

(v) is a material supplier, service provider or customer or a lessor or lessee of the company;

(f) who is not less than 21 years of age.

(ii) Under Companies Act, 2013

According to Section 149(6) of the Companies Act, 2013 – An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director, – (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience; (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company; (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company; (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year; (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year; (e) who, neither himself nor any of his relatives (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed; (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm; (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or (f) who possesses such other qualifications as may be prescribed.
Limit on number of directorships

(a) A person shall not serve as an independent director in more than seven listed companies.

(b) Further, any person who is serving as a whole time director in any listed company shall serve as an independent director in not more than three listed companies.

Maximum tenure of Independent Directors

(a) An independent director shall hold office for a term up to five consecutive years on the Board of a company and shall be eligible for reappointment for another term of up to five consecutive years on passing of a special resolution by the company.

Provided that a person who has already served as an independent director for five years or more in a company as on October 1, 2014 shall be eligible for appointment, on completion of his present term, for one more term of up to five years only.

Provided further that an independent director, who completes his above mentioned term shall be eligible for appointment as independent director in the company only after the expiration of three years of ceasing to be an independent director in the company.

Formal letter of appointment to Independent Directors

(a) The company shall issue a formal letter of appointment to independent directors in the manner as provided in the Companies Act, 2013.

(b) The letter of appointment along with the detailed profile of independent director shall be disclosed on the websites of the company and the Stock Exchanges not later than one working day from the date of such appointment.

Performance evaluation of Independent Directors

(a) The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors.

(b) The company shall disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its Annual Report.

(c) The performance evaluation of independent directors shall be done by the entire Board of Directors (excluding the director being evaluated).

(d) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Separate meetings of the Independent Directors

(a) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting.

(b) The independent directors in the meeting shall, inter-alia:

(i) review the performance of non-independent directors and the Board as a whole;

(ii) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
(iii) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

**Training of Independent Directors**

(a) The company shall provide suitable training to independent directors to familiarize them with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc.

(b) The details of such training imparted shall be disclosed in the Annual Report.

**Non Executive Directors’ Compensation and Disclosures**

This clause provides that all fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and require previous approval of shareholders in general meeting. The shareholders’ resolution shall specify the limits for the number of stock options that can be granted to non-executive directors in any financial year and in aggregate. The requirement of obtaining prior approval of shareholder in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act 2013 for payment of sitting fees, without approval of the Central Government. Further, the independent directors shall not be entitled to any stock option.

**BOARD MEETINGS**

The Board shall meet at least four times a year with a maximum time gap one hundred and twenty days between any two meetings.

**Limits on Membership of Committees**

A director shall not be a member in more than 10 committees or act as chairman of more than five committee across all companies in which he is a director. Furthermore, every director shall inform the company about the committees positions he occupies in other companies and notify changes as and when takes place.

For the purpose of considering the limit of committees on which a director can serve, all public limited companies, whether listed or not listed, shall be included and all other companies including private limited companies, foreign companies and companies under section 8 of the Companies Act, 2013 shall be excluded.

For the purpose of considering the limit of the committees on which a director can serve, Chairmanship/ membership of the Audit Committee and the Share-holders' Grievance Committee alone are to be considered.

**Other provisions as to Board and Committees**

The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.

An independent director who resigns or is removed from the Board of the Company shall be replaced by a new independent director at the earliest but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later. Provided that where the company
fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

The Board of the company shall satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.

**Code of Conduct**

1. The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company.

2. All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO.

3. The Code of Conduct shall suitably incorporate the duties of Independent Directors as laid down in the Companies Act, 2013.

4. An independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently with respect of the provisions contained in the Listing Agreement.

Explanation: The term “senior management” shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.

**Whistle Blower Policy**

1. The company shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company’s code of conduct or ethics policy.

2. This mechanism should also provide for adequate safeguards against victimization of director(s) / employee(s) who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases.

3. The details of establishment of such mechanism shall be disclosed by the company on its website and in the Board’s report.

**AUDIT COMMITTEE**

Clause 49(III) deals with Audit Committee, its composition, power etc.

(i) The requirement of giving terms of reference of the Audit Committee is a must.

(ii) There should be minimum three directors as members.

(iii) 2/3rd of the members of audit committee shall be independent directors.

(iv) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

Explanation: (a) The term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.
(b) A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.

(v) The Chairman of the audit committee shall be an independent director and shall be present at the Annual General Meeting to answer shareholder queries.

(vi) The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee.

(vii) The company secretary should act as the secretary to the committee.

**Powers of the Audit Committee**

The powers of the Audit Committee shall include the following:

(i) To investigate any activity within its terms of reference.

(ii) To seek information from any employee.

(iii) To obtain outside legal or other professional advice.

(iv) To secure attendance of outsiders with relevant expertise, if it considers necessary.

**Meetings and Role of Audit Committee**

There is requirement of holding at least four meetings in a year and not more than four months shall elapse between the two meetings of audit committee. Quorum of the meeting shall be two members or 1/3rd of members of the Audit Committee whichever is greater, but there should be a minimum of two independent members present.

The role of the audit committee shall include the following:

1. Oversight of the company’s financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.

2. Recommending for appointment, remuneration and terms of appointment of auditors of the company.

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 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 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) Qualifications 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 fund raised through an issue (public issue, right 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 utilization of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take steps in this matter.

7. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.

8. Review and monitor the auditor’s independence and performance and effectiveness of audit process.

9. Approval of any subsequent modification of transaction of the company with related parties;

10. Scrutiny of inter-corporate loans and investment.

11. Valuation of undertaking or assets of the company, wherever it is necessary.

12. Evaluation of internal financial control and risk management 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 any significant findings and follow up thereon.

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, in case the same is existing.

19. Approval of appointment of CFO (i.e. the whole-time finance Director or any other person heading the finance function or discharging that function) after assessing the qualification, experience and back of mind, etc. of the candidate.

20. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee

**Review of Information by Audit Committee**

The Audit Committee is required to mandatorily review the following information:

(a) Management discussion and analysis of financial condition and results of operations;

(b) Statement of significant related party transactions (as defined by the audit committee), submitted by the management;
(c) Management letters/letters of internal control weaknesses issued by statutory auditors;

(d) Internal audit reports relating to internal control weaknesses; and

(e) The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

**Nomination and Remuneration Committee**

A. The company shall set up a nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director.

B. The role of the committee shall, inter-alia, include the following:

1. Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the directors, key managerial personnel and other employees;

2. Formulation of criteria for evaluation of Independent Directors and the Board;

3. Devising a policy on Board diversity;

4. Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal. The company shall disclose the remuneration policy and the evaluation criteria in its Annual Report.

C. The Chairman of the nomination and remuneration committee could be present at the Annual General Meeting, to answer the shareholders’ queries. However, it would be up to the Chairman to decide who should answer the queries.

**SUBSIDIARY COMPANY**

(i) Atleast one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of material non-listed Indian subsidiary company.

(ii) The Audit Committee of the listed holding company shall also review the financial statements, in particular the investments made by the unlisted subsidiary company.

(iii) The minutes of the Board meetings of the unlisted subsidiary company is required to be placed at the Board meeting of the listed holding company.

(iv) The management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.

(v) The company shall formulate a policy for determining ‘material’ subsidiaries and such policy shall be disclosed to Stock Exchanges and in the Annual Report.

(vi) For the purpose of this clause, a subsidiary shall be considered as material if the investment of the company in the subsidiary exceeds twenty per cent of its consolidated net worth as per the audited balance sheet of the previous financial year or if the subsidiary has generated twenty per cent of the consolidated income of the company during the previous financial year.
(vii) No company shall dispose of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting.

(viii) Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary shall require prior approval of shareholders by way of special resolution.

The term “material non-listed Indian subsidiary” means an unlisted subsidiary, incorporated in India, whose turnover or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated turnover or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.

The term “significant transaction or arrangement” means any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.

Where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions also apply to the listed subsidiary insofar as its subsidiaries are concerned.

Risk Management

A. The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures.

B. The Board shall be responsible for framing, implementing and monitoring the risk management plan for the company.

C. The company shall also constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.

Related Party Transactions

A. A related party transaction is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.

B. A ‘related party’ is a person or entity that is related to the company. Parties are considered to be related if one party has the ability to control the other party or exercise significant influence over the other party, directly or indirectly, in making financial and/or operating decisions and includes the following:

1. A person or a close member of that person’s family is related to a company if that person:
   a. is a related party under Section 2(76) of the Companies Act, 2013; or
   b. has control or joint control or significant influence over the company; or
   c. is a key management personnel of the company or of a parent of the company; or

2. An entity is related to a company if any of the following conditions applies:
   a. The entity is a related party under Section 2(76) of the Companies Act, 2013; or
b. The entity and the company are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others); or

c. One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member); or

d. Both entities are joint ventures of the same third party; or

e. One entity is a joint venture of a third entity and the other entity is an associate of the third entity; or

f. The entity is a post-employment benefit plan for the benefit of employees of either the company or an entity related to the company. If the company is itself such a plan, the sponsoring employers are also related to the company; or

g. The entity is controlled or jointly controlled by a person identified in (1).

h. A person identified in (1)(b) has significant influence over the entity (or of a parent of the entity);

**DISCLOSURES**

The following disclosures are required to be made under the revised clause:

- Related Party Transactions
- Disclosure of Accounting Treatment
- Remuneration of Directors
- Management
- Shareholders
- Resignation of Directors
- Formal letters of appointment
- Annual Report
- Proceeds from public issues, Rights issues, preferential issues etc.

**CEO/CFO CERTIFICATION**

Clause 49(IX) deals with the CEO/CFO certification

The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and Companies Act 2013 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:

(a) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

(i) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

(ii) these statements together present a true and fair view of the company’s affairs and are in compliance with existing accounting standards, applicable laws and regulations.

(b) There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company’s code of conduct.
(c) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of the internal control systems of the company pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

(d) They have indicated to the auditors and the Audit committee –

(i) significant changes in internal control over financial reporting during the year;
(ii) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
(iii) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the company’s internal control system over financial reporting.

REPORT ON CORPORATE GOVERNANCE

Clause 49(X) narrates the details with respect to Corporate Governance.

The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format prescribed in this clause. The report is required to be signed either by the Compliance Officer or the Chief Executive Officer of the company. In annual report there should be a separate section on corporate governance and should contain the details as given in listing agreement.

COMPLIANCE CERTIFICATE

Clause 49(XI) deals with compliance certificate on Corporate Governance.

The practising Company Secretaries have also been recognised to issue Certificate of Compliance of Conditions of Corporate Governance. The clause provides that the company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors’ report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.

NON-MANDATORY REQUIREMENTS

The following non-mandatory requirements have additionally been provided:

(1) The Board: A non-executive Chairman may be entitled to maintain a Chairman’s office at the company’s expense and also allowed reimbursement of expenses incurred in performance of his duties.

(2) Shareholder Rights: A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of share-holders.

(3) Audit qualifications: Company may move towards a regime of unqualified financial statements.

(4) Separate posts of Chairman and CEO: The Company may appoint separate persons to the post of chairman and Managing Director/CEO.

(5) Reporting of Internal Auditor: The internal auditor may report directly to the Audit Committee.
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<td><strong>Section 149(6)</strong>: An independent director in relation to a company, means a director other than a MD or a WTD or a nominee director.</td>
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<td>2.</td>
<td>Modified definition of IDs</td>
<td><strong>Clause 49</strong>(II)(B): SEBI has amended the definition of Independent Director in alignment with the provisions of Companies Act, 2013.</td>
<td><strong>Section 149(6)</strong> of the Companies Act 2013 defines the term Independent Director.</td>
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<td>Qualification of IDs</td>
<td>The qualifications of IDs are not specified in the amended clause 49 of the listing agreement</td>
<td><strong>Companies (Appointment and Qualification of Directors) Rules, 2014:</strong> An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company’s business.</td>
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<td>4.</td>
<td>Whistle-Blowing Mechanism</td>
<td><strong>Clause 49</strong>(II)(F): The company shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company’s code of conduct or ethics policy. This mechanism should also provide for adequate safeguards against victimization of director(s)/ employee(s) who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases. The details of establishment of such mechanism shall be disclosed by</td>
<td><strong>Section 177(9):</strong> Every listed company and other classes of companies to establish a Vigil mechanism for directors and employees to report genuine concern. It provide adequate safeguards against victimization of employees and directors who avail of the Vigil mechanism and also provide for direct access to the chairperson of the Audit committee or the director nominated to play the role of audit committee, as the case may be, in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization. The details of establishment of Vigil mechanism</td>
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| 5. | **Prohibited Stock options for IDs** | Clause 49(II)(C) :
IDs shall not be entitled to any stock options. |
|   | ![Image](Image) | **Section 197(7):**
IDs shall not be entitled to any stock option. |
| 6. | **Separate meeting of IDs** | Clause 49(II)(B)(6) :
The IDs of the company shall hold at least one meeting in a year, without the attendance of non independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting. |
|   | ![Image](Image) | **Section 149 read with Schedule IV:**
IDs of the company shall hold at least one meeting in a year, without the attendance of non independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting. |
| 7. | **Training of IDs** | Clause 49(II)(B):
The company shall provide suitable training to independent directors to familiarize them with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc. The details of such training imparted shall be disclosed in the Annual Report. |
|   | ![Image](Image) | The Companies Act 2013 did not specify any training of IDs and Board of Directors. |
| 8. | **Liability of IDs** | Clause 49(II)(E) :
An independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently with respect of the provisions contained in the Listing Agreement. |
|   | ![Image](Image) | **Section 149(12):**
An independent director, a NED not being promoter or KMP, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. |
| 9. | **Stakeholders Relationship Committee** | Clause 49(VIII)(E):
A committee under the Chairmanship of a non-executive director and such other members as |
|   | ![Image](Image) | **Section- 178(5):**
The Board of Directors of a company which consists of more than one thousand shareholders,
may be decided by the Board of the company shall be formed to specifically look into the redressal of grievances of shareholders, debenture holders and other security holders. This Committee shall be designated as ‘Stakeholders Relationship Committee’ and shall consider and resolve the grievances of the security holders of the company including complaints related to transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends.

debenture-holders, deposit holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee (SRC) consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. The SRC shall consider and resolve the grievances of security holders of the company.

| | 1. All pecuniary relationship or transactions of the non-executive directors vis-a-vis the company shall be disclosed in the Annual Report.
| | 2. In addition to the disclosures required under the Companies Act, 2013, the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the Annual Report:
| | (a) All elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc.
| | (b) Details of fixed component and performance linked incentives, along with the performance criteria.
| | (c) Service contracts, notice period, severance fees.
| | (d) Stock option details, if any – and whether issued at a discount as well as the period over which accrued and over which exercisable.
| | 3. The company shall publish its

| | Section 197 (2) and Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014:
| | (1) Every listed company shall disclose in the Board’s report:
| | (i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;
| | (ii) the percentage increase in remuneration of each director, CFO, CEO, CS or Manager, if any, in the financial year;
| | (iii) the percentage increase in the median remuneration of employees in the financial year;
| | (iv) the number of permanent employees on the rolls of company;
| | (v) the explanation on the relationship between average increase in remuneration and company performance;
| | (vi) comparison of the remuneration of the KMP against the performance of the company;
criteria of making payments to non-executive directors in its annual report. Alternatively, this may be put up on the company’s website and reference drawn thereto in the annual report.

4. The company shall disclose the number of shares and convertible instruments held by non-executive directors in the annual report.

5. Non-executive directors shall be required to disclose their shareholding (both own or held by/for other persons on a beneficial basis) in the listed company in which they are proposed to be appointed as directors, prior to their appointment.

These details should be disclosed in the notice to the general meeting called for appointment of such director.

(vii) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;

(viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;

(ix) the key parameters for any variable component of remuneration availed by the directors;

(x) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year; and

(xi) affirmation that the remuneration is as per the remuneration policy of the company.
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| 11. | **Performance evaluation of IDs** | **Clause 49(II)(B)(5):**  
(a) The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors.  
(b) The company shall disclose the criteria for performance evaluation, as laid down by the Nomination Committee in its Annual Report.  
(c) The performance evaluation of independent directors shall be done by the entire Board of Directors (excluding the director being evaluated).  
(d) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director. | **Section 178(2) read with Schedule IV:**  
The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director’s performance.  
The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.  
On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director. |
| 12. | **Related Party Transaction (RPT)** | **Clause 49 (VII):**  
A RPT is a transfer of services or obligations between a company and a related party, regardless of whether a price is charged.  
A ‘related party’ is a person or entity that is related to the company.  
Parties are considered to be related if one party has the ability to control the other party or exercise significant influence over the other party, directly or indirectly, in making financial and/or operating decisions and includes the following:  
1. A person or a close member of that person’s family is related to a company if that person:  
   (a) is a related party under Section 2(76) of the Companies Act, 2013; or  
   (b) has control or joint control or significant influence over the company; or | **Section 2 (76) & 188**  
"Related party", with reference to a company, means—  
(i) a director or his relative  
(ii) a KMP or his relative;  
(iii) a firm, in which a director, manager or his relative is a partner;  
(iv) a private company in which a director or manager is a member or director;  
(v) a public company in which a director or manager is a director or holds along with his relatives, more than 2% of its paid-up share capital;  
(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, or instructions of a director or manager; |
(c) is a KMP of the company or of a parent of the company; or

2. An entity is related to a company if any of the following conditions applies:

(a) The entity is a related party under Section 2(76) of the Companies Act, 2013; or

(b) The entity and the company are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others); or

(c) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member); or

(d) Both entities are joint ventures of the same third party; or

(e) One entity is a joint venture of a third entity and the other entity is an associate of the third entity; or

(f) The entity is a post employment benefit plan for the benefit of employees of either the company or an entity related to the company, if the company is itself such a plan, the sponsoring employers are also related to the company; or

(g) The entity is controlled or jointly controlled by a person identified in (1).

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;

(viii) any company which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary.

"Related party" means a director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

No company shall enter into any contract or arrangement with a related party, except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions.

A company having a paid-up share capital of Rs 10 Crores or more shall not entered into a contract or arrangement, except with the prior approval of the company by a special resolution.

A company shall not enter into any contract or arrangement, except with the prior approval of the company by a special resolution.

A company shall not enter into any contract or arrangement with related party subject to conditions;

- sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding 25%.

- of the annual turnover selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents exceeding 10% of
(h) A person identified in (1)(b) has significant influence over the entity (or of a parent of the entity); or

The company shall formulate a policy on materiality of RPTs and also on dealing with RPTs. A transaction with a related party shall be considered material if the transaction/transactions to be entered into individually or taken together with previous transactions during a financial year;

- exceeds 5% of the annual turnover or
- 20% of the net worth of the company as per the last audited financial statements of the company, whichever is higher.

All RPTs shall require prior approval of the Audit Committee. All material RPTs shall require approval of the shareholders through special resolution and the related parties shall abstain from voting on such resolutions.

Net Worth.

- leasing of property of any kind exceeding 10% of the net worth or exceeding 10% of turnover.
- availing or rendering of any services directly or through appointment of agents exceeding 10% of Net Worth.
- appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding Rs.2,50,000/- remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding 1% of the net worth.

Turnover or Net Worth shall be on the basis of the Audited Financial statements of the preceding Financial Year.

In case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.

No member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

Every contract or arrangement entered into, shall be referred to in the Board’s report to the shareholders along with the justification for entering into such contract or arrangement.
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<th>Disclosure of RPTs</th>
<th>Clause 49(VIII)(A): Details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance. The company shall disclose the policy on dealing with RPTs on its website and also in the Annual Report.</th>
<th>No such Provision.</th>
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<td>13</td>
<td>Disclosure of Different Accounting Standard</td>
<td>Clause 49(VIII)(B): Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction in the Corporate Governance Report.</td>
<td>Section-129(5): Where the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.</td>
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<td>14</td>
<td>Constitution of Nomination &amp; Remuneration Committee</td>
<td>Clause 49(IV)- The company shall set up a nomination and remuneration committee which shall comprise</td>
<td>Section 178 and Companies (Meetings of Board and its Powers) Rules, 2014: The Nomination and Remuneration</td>
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at least 3 directors, all of whom shall be NEDs and at least 1/2 shall be independent.

A. Chairman of the committee shall be an independent director.

B. The role of the committee shall, inter-alia, include the following:

1. Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the directors, KMP and other employees;

2. Formulation of criteria for evaluation of IDs and the Board;

3. Devising a policy on Board diversity;

4. Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal. The company shall disclose the remuneration policy and the evaluation criteria in its Annual Report.

C. The Chairman of the nomination and remuneration committee could be present at the AGM, to answer the shareholders’ queries. However, it would be upto the Chairman to decide who should answer the queries.

Committee is applicable to the following classes of Companies:

(i) Every listed Company

(ii) Every other Public Company

(a) Having Paid up capital of Rs.10 crores or more; or

(b) Having turnover of Rs.100 Crores:

- Which have, in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores.

- The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

The above mentioned companies shall constitute the Nomination and Remuneration Committee consisting of -

- 3 or more NEDs out of which not less than one half shall be IDs.

- The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

The Nomination and Remuneration Committee shall -

- Identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal, carry out evaluation of every director's performance.
| 16. | **Appointment of one Woman Director** | **Clause 49 (II)(A):** The Board of Directors of the company shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the Board of Directors comprising non executive Directors. |

|  |  | **Section 149(1) and Companies (Appointment and Qualification of Directors) Rules, 2014:** (i) every listed company; (ii) every other public company having - (a) paid-up share capital of Rs.100 Crores or more; or (b) turnover of Rs.300 Crore or more shall appoint at least one woman director. A company shall comply with provisions within a period of six months from the date of its incorporation. |

|  |  | Formulate the criteria for determining qualifications, positive attributes and independence of a director and Recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees. The Nomination and Remuneration Committee shall ensure that –  

- (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;  

- (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and  

- (c) remuneration to directors, KMPs and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.  

The policy shall be disclosed in the Board’s report. |
<p>| 17. | <strong>Maximum No. of directorship of IDs.</strong> | <strong>Clause 49 (II)(B)(3):</strong> A person shall not serve as an independent director in more than seven listed companies. Any person who is serving as a whole-time director in any listed company shall serve as an independent director in not more than three listed companies. | <strong>Section 165:</strong> A person shall hold not office as a director, including any alternate directorship in more than 20 companies. The max no. of public companies in which a person can be appointed as a director shall not exceed 10. |
| 18. | <strong>Maximum tenure of IDs</strong> | <strong>Clause 49(II)(B):</strong> An independent director shall hold office for a term up to five consecutive years on the Board of a company and shall be eligible for reappointment for another term of up to five consecutive years on passing of a special resolution by the A person who has already served as an independent director for five years or more in a company as on October 1, 2014 shall be eligible for appointment, on completion of his present term, for one more term of up to five years only. An independent director, who completes his above mentioned term shall be eligible for appointment as independent director in the company only after the expiration of three years of ceasing to be an independent director in the company. | <strong>Section 149:</strong> An independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board’s report. No independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. |
| 19. | <strong>Risk management</strong> | <strong>Clause 49 (VI):</strong> The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures. The Board shall be responsible for framing, implementing and monitoring the risk management plan for the company. The company shall also constitute a Risk Management Committee. The Board shall define the roles and | <strong>Section 134(3):</strong> A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company. |</p>
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<th>responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.</th>
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<td>Clause 49 (II)(D) (6): The Board of the company shall satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.</td>
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<td>20. Succession planning</td>
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<td>There is no such provision.</td>
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<td>Clause 49 (II)(D): An independent director who resigns or is removed from the Board of the Company shall be replaced by a new independent director at the earliest but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later. Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.</td>
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<td>21. Filing of Casual Vacancy of IDs</td>
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<td>Schedule IV: An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be. Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.</td>
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<td>Section 149 &amp; Part III of Schedule IV: The independent directors shall— (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company; (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;</td>
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<td>22. Code of Conduct of Board of Directors &amp; Senior Management</td>
<td>All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO. The Code of Conduct shall suitably incorporate the duties of Independent Directors as laid down in the Companies Act, 2013.</td>
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(3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;

(4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;

(5) strive to attend the general meetings of the company;

(6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;

(7) keep themselves well informed about the company and the external environment in which it operates;

(8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;

(9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;

(10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;

(11) report concerns about unethical behaviour, actual or suspected fraud or violation
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<td>of the company's code of conduct or ethics policy; (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees; (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.</td>
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<td>23.</td>
<td><strong>Disclosure of Appointment of Director</strong></td>
<td><strong>Clause 49(VIII)(G):</strong> The letter of appointment of the independent director along with the detailed profile shall be disclosed on the websites of the company and the Stock Exchanges not later than one working day from the date of such appointment.</td>
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<td>A return containing the particulars of appointment of director or key managerial personnel and changes therein, shall be filed with the Registrar in Form DIR-12 along with such fee as may be provided in the Companies (Registration Offices and Fees) Rules, 2014 within thirty days of such appointment or change, as the case may be.</td>
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<td>24.</td>
<td><strong>Disclosure of Resignation of Director</strong></td>
<td><strong>Clause 49(VIII)(F):</strong> The company shall disclose the letter of resignation along with the detailed reasons of resignation provided by the director of the company on its website not later than one working day from the date of receipt of the letter of resignation. The company shall also forward a copy of the letter of resignation along with the detailed reasons of resignation to the stock exchanges not later than one working day from the date of receipt of resignation for dissemination through its website.</td>
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<td><strong>Section 169:</strong> A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within 30 days in form DIR-12 and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company. Where a director resigns from his office, he shall within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form DIR-11 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.</td>
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