

**GUIDANCE NOTE  
ON  
SECRETARIAL AUDIT  
(Release 1.2)**



**THE INSTITUTE OF  
Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

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## PREFACE

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

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

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

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

- (a) Firstly, to protect the interests of all the stakeholders;
- (b) Secondly, to have effective compliance system and governance process.

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

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

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

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

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

I place on record my sincere thanks to; CS Mahesh Athavale, Past President ICSI; CS Pavan Kumar Vijay, Past President, ICSI; CS V Sreedharan, Past Council Member, ICSI; CS Ahalada Rao, Council Member; CS Ashish Garg, Council Member; Mr. V K Aggarwal, Former Principal Director; CS Henry Richard, Retd. Regional Director, South Eastern Region, Ministry of Corporate Affairs and Mr. Vinay Sanduja, Senior Associate, Dua Associates (Advocates & Solicitors) for their valuable inputs.

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

Date : 27-03-2015  
Place: New Delhi

**CS Atul Mehta**  
*President*  
The Institute of Company Secretaries of India

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# 1

## SECRETARIAL AUDIT

### **Genesis of Secretarial Audit**

A corporation has to function within the periphery of host of legislations. It is essential for a corporation to abide by plethora of applicable laws, rules, procedures, regulations and the internal regulatory framework.

Under most of the laws, the persons who are responsible for compliance and liable for punishment for non-compliances are directors, the Company Secretary and officers who have been designated to ensure compliances of specific laws and regulations applicable to a company.

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

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

Secretarial Audit also covers non financial aspects of the business having impact on its business and performance and verifies compliances of applicable laws, regulations and guidelines. Nonetheless, this exercise also mitigates business risk to a great extent. It evaluates the manner in which the affairs of a company are conducted. While pursuing its business activities, the company has to comply with the rules and regulations relating to the Companies Act, Securities laws, FEMA, industry specific laws and general laws like Labour Laws, Competition Law and Environmental and Pollution Related laws.

Secretarial Audit postulates verification on a test basis of records, books, papers and documents to check compliance with the provisions of various statutes, laws and rules & regulations by a Company Secretary in Practice to ensure compliance of legal and procedural requirements and processes.

Secretarial Audit is, therefore, an independent and objective assurance intended to add value and improve operations of a company. It helps to accomplish the organisation's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

### **Recommendation by Parliamentary Standing Committee on Finance**

*Report of Parliamentary Standing Committee on Finance*

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

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

### **Applicability of Secretarial Audit**

Section 204 of the Companies Act, 2013 provides for mandatory secretarial audit for every listed company and companies belonging to other prescribed class of companies.

Such company is required to annex a secretarial audit report with its Board’s report.

As per rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the prescribed class of companies is as under:

- (a) every public company having a paid-up share capital of fifty crore rupees or more; or
- (b) every public company having a turnover of two hundred fifty crore rupees or more.

The term ‘Turnover’ has been defined in section 2(91) as the aggregate value of the realization of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year.

*Private Company which is a subsidiary of a Public Company*

Section 2(71) of the Companies Act, 2013 defines a “Public Company as one

- (a) Which is not a private company;
- (b) Has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital as may be prescribed.

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

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

The companies which are not covered under section 204 may obtain Secretarial Audit Report voluntarily as it provides an independent assurance of the compliances of applicable laws of the company.

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

### **Purpose of Secretarial Audit**

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

Secretarial Audit helps to detect the instances of non-compliances and facilitates taking corrective-measures.

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

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

Few benefits that accrue from the Secretarial Audit are as under:

#### **(a) Promoters**

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

(b) *Non-executive/Independent directors*

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

(c) *Government authorities/regulators*

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

(d) *Investors*

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

(e) *Other Stakeholders*

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

### **Secretarial Audit and Company Secretary in Practice**

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

In order to provide guidance to its members who are in practice to adopt a robust and efficient process of Secretarial Audit, the Institute of Company Secretaries of India has issued this guidance note.

### **Appointment of Secretarial Auditor**

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

### **Time of appointment**

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

### **Notice of Annual General Meeting**

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

### **Rights and duties of Secretarial Auditor under the Companies Act, 2013**

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

## **Assistance and facilities to the company secretary in practice while conducting secretarial audit**

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

### **Cost to the Company**

Taking into account the assurance provided and the avoidance of penalties and the consequent saving of the possible liabilities, the cost of Secretarial Audit is far less than the benefits which the directors and the stakeholders would derive from Secretarial Audit.

### **Approach to Secretarial Audit**

The object of the Secretarial Auditor's Report is to undertake evaluation and form an opinion and to report to the shareholders as to whether, and if so, to what extent, the company has complied with the laws comprising various statutes, rules, regulations, guidelines about the board processes and existence of compliance management system. This requires knowledge of the corporate laws, economic laws, securities laws, FEMA, and other laws specifically applicable to the company, Corporate governance provisions, Secretarial Standards etc. To be able to give an effective report, a Company Secretary in Practice is expected to have the following:

- (1) *Knowledge* : While conducting the Audit, the Secretarial Auditor should have the knowledge of exact nature and activities of the company and the laws which are applicable to the company. He should have understanding of existence of compliance system, Board processes & procedures, secretarial standards etc.
- (2) *Team* : He is required to ensure that he has a team of appropriately trained staff, who can support the preparation of the report. Most importantly they should be informed of the basic audit requirements and ethics. Related legislative and administrative updates should be shared and communicated with the team to build and maintain the expertise.
- (3) *Documentation & backup* : He is expected to develop a manual & checklists which will help in evaluation process. He is required to keep proper record of documents checked during the course of audit.
- (4) *Third party supporting and evidences* : It would always be helpful to check filing made by the company at MCA & other authorities independently. Verification and enquiries can also be made with the other statutory and internal auditors and consultants and Independent Directors of the Company
- (5) *Adhering to the timelines* : Schedule set to conduct the audit process should be strictly adhered to in order to gain the confidence of the client and boost the expertise level of the team.
- (6) *Honesty and impartiality* : A Company Secretary in Practice has the professional duty to provide an unbiased and objective view. Company Secretary in Practice should be independent from the company being audited.

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

- (7) *Maintaining Audit Diary* : The Audit exercise needs to be planned and executed professionally and verifications done by the team members should be recorded daily. Such maintenance of diary would help in keeping audit trail that would come in handy to ensure the quality of audit.
- (8) *Back up papers to be maintained* : The Secretarial Auditor should maintain Audit Diary and back up papers like working papers, supporting documents, observations, management explanations, basis for his conclusions more particularly for qualifications in the report etc. as these will provide the audit evidence for defending himself in any possible allegation of misconduct so also peer review and help in defending himself in case of any enquiry or questions from regulators.

### **General Principles/Guidelines while conducting Secretarial Audit**

Audit is an intelligent and critical examination of the books and records of business done by an independent qualified person. It is done. by process of verification of documents, registers, filings, information, Systems, procedures and explanations received from the clients.

Audit scope determines the time involved in audit exercise, depth of auditing, aspects to be covered etc. Audit scope depends on, relevant legal provisions, nature of audit, objectives of audit & terms of engagement. However the terms of engagement cannot, restrict the scope of an audit in relation to matters which are prescribed by legislation.

In the context of Secretarial Audit as contemplated by section 204 of the Companies Act 2013 and the Rules ,a very pertinent question which arises for consideration is the extent of detailed verification/ evaluation that has to be resorted to before reporting or giving opinion on compliance of the provisions of various laws as mentioned in form MR 3 and specific laws applicable to the company concerned .

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

Therefore, certain techniques of sample checking and test checking should be applied before forming a reasonable opinion that the document being certified projects a true and fair view of the state of affairs. There are no specific modalities or stringent test practices applicable for conducting Secretarial Audit. However, the following guiding principles can be adopted while deciding about the extent of checking that is required.

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

The following are general techniques of auditing

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

The same techniques may be applied and adopted in secretarial audit. For instance...while verifying the list of past and present shareholders , a company secretary in practice cannot be

expected to check every folio of the Register of Members, whose number could run into lakhs. Similarly, the number of share transfers registered in a year could run into thousands. If one is expected to check every transaction in these matters, it could be well almost impossible to meet the statutory time limits for completing the audit assignment.

Therefore, certain techniques of sample checking and test checking should be applied before forming a reasonable opinion that the document being certified projects a true and fair view of the state of affairs. There are no specific modalities or stringent test practices applicable for conducting Secretarial Audit.

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

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

(ii) The principle of materiality is another important concept. The sample chosen for detailed checking should be representative of the whole, or the 'population', in statistical parlance.

For example, in the case of share transfers, instances of transfer of large blocks of shares could be chosen for detailed scrutiny. Or, the 'busy' period for transfer of shares in the year could be identified and selected for sample checking.

(iii) 'High risk' areas could be identified and subjected to more extensive scrutiny than others.

For instance, in the case of shares on which there are restrictions on transfer-statutory or otherwise, a more extensive examination is warranted.

In conclusion, it may be pointed out that a company secretary in practice will do well to remember that the ultimate responsibility of the facts and figures certified will rest with him. While the extent of checking is a matter of personal judgment, he should safeguard himself against any possible charge of negligence in respect of inaccurate or incomplete statements, certified by him. A Company Secretary in Practice is advised to exercise all possible care, reasonable skill & due diligence.

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

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

He should obtain sufficient appropriate evidences through the verification of compliances and other substantive procedures to enable him to draw reasonable conclusions to form an opinion.

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

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

## **Peer review of Secretarial Auditors**

As of now, there is no requirement of peer review of Secretarial Auditors.

## **Process of Secretarial Audit**

Secretarial Audit is a process to check compliance with the provisions of all laws applicable specifically to the company and rules/regulations/procedures; adherence to good governance practices with regard to the systems and processes of seeking and obtaining approvals of the Board and/or shareholders, as may be necessary, for the business and other activities of the company, carrying out activities in a lawful manner and the maintenance of minutes and records relating to such approvals or decisions and implementation. The Secretarial Auditor also expresses an opinion as to whether there exist adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

### *Communication to earlier Incumbent*

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

### *Acceptance of Appointment*

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

### *Preliminary Discussions/Surveys*

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

### *Preliminary Meeting*

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

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

### *Finalization of Audit Plan and Briefing the Staff*

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

### *Testing, Interviews and Analysis*

The secretarial auditor may use a variety of tools and technology to gather information about the company's operations. The secretarial auditor should determine whether the controls identified during the preliminary review are operating properly and in the manner described by the Company. Fieldwork typically consists of interviewing the staff of the company whether formally or informally, reviewing procedure manuals, processes, testing and analysing compliance with applicable policies and procedures and laws, rules, regulations and assessing the adequacy of controls. This exercise may result in significant findings which the secretarial auditor may bear in mind while preparing the secretarial audit report.

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

### *Working Papers*

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

### *Management Representation Letter*

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

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

### *Audit Summary for Discussions*

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

### *Submission of Secretarial Audit Report*

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

## **Signing**

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

## **Reporting with Qualification**

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

Further, the Board of Directors, in its Board's report, shall explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in the Secretarial Audit Report.

## **Duty to Report Fraud**

A very significant duty has been cast on the company secretary in practice under section 143 (12) of the Companies Act, 2013. It provides that if the company secretary in practice, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government.

The Companies (Amendment) Bill, 2014 passed by Lok Sabha proposes to substitute section 143(12) as under:

“(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this subsection to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.”

Further, as per the Companies (Audit and Auditors) Rules, 2014, in case the auditor has sufficient reason to believe that an offence involving fraud, is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than sixty days of his knowledge.

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

Sub-section (13) of Section 143 provides that no duty shall be regarded as having been contravened by reason of his reporting the matter (fraud) if it is done in good faith.

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

Clause (f) of Explanation under section 447 of the Companies Act 2013 defines "Fraud" in relation to affairs of a company or anybody corporate includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from or to injure the interest of the company or its shareholders or its creditors or any other person whether or not there is any wrongful gain or wrongful loss.

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

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

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

The Practicing Company Secretary has to examine the transactions during the period of audit to identify whether any fraud element is present in the transaction. In the past "Fraud" has been noticed in many cases of scams in the following kinds of transactions:-

- Related Party Transactions – In major scams like Satyam scam, Polypack scam etcetera, the genesis of fraud was found in RPT. In the case of Satyam scam, RPT transactions were put through for approval for approximately rupees 14000 crore between satyam computer and maytas properties and maytas infrastructure. In the case of Tyco scam, the CEO and MD carried out 88 separate RPT deals with business entities owned by the sons and relatives of the CEO of Tyco. This scam lead to the promulgation of the Code of Corporate Governance in UK.
- Excessive managerial remuneration – There were many corporate scams like Worldcom, Tyco scam, Global Crossing, Fannie Mae etcetera where KMP drew excessive remuneration from the company. In these scams either the profits were overstated to draw excessive remuneration or remuneration was drawn through wrong entries in books. Though the remuneration paid is within the limits prescribed in schedule V, it is necessary to find out whether fraud element is present
- Insider Trading – In major scams like Enron, Health South, Galleon etcetera, criminal insider trading was found. Share transfers are to be examined to find out whether KMP or employees of the company either bought or sold shares of the company

before any critical event. In Enron, KMP sold off their shares just before filing of Chapter 11 application by the company for bankruptcy. In the case of Health South KMP sold off their shares before announcement of loss for the year

Inter Company transactions – Group company transactions are to be examined carefully to identify fraud elements. Intercompany investments, guarantees, loans and provision of security may be detrimental or injurious to the interest of the lending company, its shareholders and other stakeholders. In the case of HIH scam, a leading health insurance company, the intercompany transactions indirectly benefitted KMP of the parent company

- Mergers/demergers/acquisitions – In many scams relating to acquisitions fraud in the form of asset stripping has taken place as in the case of Phone4U, Penta Media etcetera.
- IPO frauds – The problem of vanishing companies has posed major problem to Regulators. These companies diverted IPO funds for purposes other than those stated in the prospectus. Frauds generally take place when funds raised from public by way of IPO or deposits or otherwise or from Banks and Financial Institutions are not utilized for the stated purposes. Therefore during secretarial audit the fund utilization needs to be examined to identify fraud.
- Ponzy schemes – There were many scams in this category like Speak Asia, Saradha chits etcetera. During secretarial audit it is necessary to identify whether any principal amount is used to give returns to customers instead of paying returns out of profits

The above mentioned areas are not exhaustive but only some given as examples to guide fraud detection. As per rule 13 of the Companies (Audit and Auditors) Rules 2013, the Practicing Company secretary has to bring to the notice of the audit committee the findings relating to fraud and call for reply within 45 days. Within 15 days after obtaining reply the PCS has to submit his report including the reply of audit committee to the Secretary, Ministry of Corporate Affairs, Govt. of India in the format prescribed in ADT-4 If the audit committee does not give any reply, PCS has to submit report as stated above within 60 days.

### **Scope of Secretarial Audit**

In terms of Form No.MR-3, the Secretarial auditor needs to examine and report the compliance of the following five specific laws:

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

- (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
- (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
- (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
- (f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
- (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
- (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;

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

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

- Reporting on compliance of Five laws as mentioned in form MR-3
  - Companies Act, 2013,
  - Securities Contracts (Regulation) Act, 1956 ('SCRA'),
  - Depositories Act, 1996,
  - Foreign Exchange Management Act, 1999 to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowing,
  - Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 as specified in MR-3.
- Reporting on compliance of 'Other laws as may be applicable specifically to the company' shall mean all the laws which are applicable to specific industry for example for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry; likewise for a company in petroleum sector- all laws applicable to petroleum industry; similarly for companies in pharmaceutical sector, cement industry etc.
- Examining and reporting whether the adequate systems and processes are in place to monitor and ensure compliance with general laws like labour laws, competition law, environmental laws.

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

However, Secretarial Auditor is expected to report on the Secretarial Compliance of these laws. A sample checklist is placed at **Annexure-D**

### **'Other areas' which need to be checked**

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

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

Format of Secretarial Audit report also requires reporting on whether-

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

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

### **Professional Responsibility and Penalty for incorrect Audit Report**

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

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

he shall be liable under section 447.

Section 447 deals with punishment for fraud which provides that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. In case, the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

In view of this, a company secretary in practice will be attracting the penal provisions of section 448, for any false statement in any material particular or omission of any material fact in the

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

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

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

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

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

### **Functions of Company Secretary in Employment**

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

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

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

In addition, the Central Government has prescribed the following additional duties for Company Secretary (in employment) through rules:

- (1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
- (2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;

- (3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
- (4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
- (5) to assist the Board in the conduct of the affairs of the company;
- (6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- (7) to discharge such other duties as have been specified under the Act or rules; and
- (8) such other duties as may be assigned by the Board from time to time.

### **Steps for preparing for Secretarial Audit**

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

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

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

The Secretarial Auditor should evaluate such aspects in the course of Secretarial Audit that should help him in identifying the gaps, if any, in the compliance management system in terms of policy, procedure, implementation, compliance risk management, compliance structure, training & Communication, monitoring & control. Based on the evaluation of Compliance management system, recommendations may be made to strengthen the same. The company secretary in practice can also recommend for compliance management system if the company does not have one.

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

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

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

**Form No. MR-3**

**SECRETARIAL AUDIT REPORT**

*FOR THE FINANCIAL YEAR ENDED ... ..*

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

To,

The Members,

..... Limited

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

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

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

- (i) The Companies Act, 2013 (the Act) and the rules made thereunder;
- (ii) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder;
- (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
- (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
- (v) The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-
  - (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
  - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
  - (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

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

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

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

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

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

I/we further report that

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

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

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

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

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

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

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

*For example:*

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

Place :

Signature:

Date :

Name of Company Secretary in Practice / Firm:

ACS/FCS No.

C P No.:

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

**Sample WorkSheet**

<b>1.</b>	<b>CAPITAL STRUCTURE</b>				
<i>Particulars</i>	<i>As on 01/04/2014</i>	<i>Add: Increase in Capital (if any)</i>	<i>Less: Reduction in Capital (if any)</i>	<i>Date of passing resolution</i>	<i>Capital as on 31/03/2015</i>
Authorised Capital					
Equity					
Preference					
Unclassified					
Issued Capital					
Subscribed Capital					
Paid-up Capital					
Public Issue			Not Applicable		
Rights Issue			Not Applicable		
Bonus Issue			Not Applicable		
Private Placement/ Preferential Allotment (Other than conversion)			Not Applicable		
Private Placement/ Preferential Allotment (arising out of conversion)			Not Applicable		
Allotment of shares pursuant to ESOP			Not Applicable		
Allotment consequent to Scheme of Arrangement/ Merger/ Amalgamation etc.			Not Applicable		
Buy-back of Shares		Not Applicable			
Reduction of capital		Not Applicable			
Share Forfeited (if any)					











	d) Complete list of Sundry Creditors containing the following details:	
	i. Nature of Balances	
	ii. Opening Balance and Transactions made	
	e) Statement of Related Party Transactions as per AS-18 and the Approval of Board/Shareholder for approving the transaction related to RPT.	
	f) Details of Dividend declared:	
	<b>Particulars</b>	
	<i>Amount Paid</i>	
	<i>Percentage of dividend paid</i>	
	<i>Dividend Tax Paid</i>	
	<i>Date of Payment of Dividend</i>	
	<i>Actual amount claimed by the shareholder</i>	
	<i>Amount transferred to unpaid dividend account</i>	
	<i>Amount transferred to IEPF and SRN of Form I and 5INV</i>	
<b>9.</b>	<b>APPROVALS FROM RESERVE BANK OF INDIA</b>	
	a) Whether company has made any foreign investment or company has received FDI?	
	b) Whether company has filed annual statement related to Foreign assets and liabilities? If yes, Please mention filling date	
	c) Whether company is having External Commercial Borrowing/issued FCCB? If yes provide copy of LRN issued by RBI and Form ECB 2.	
	d) Whether company has made any investment in Abroad/provided guarantee to the Foreign Company? If yes, provide details.	
	e) Whether any Show cause notice received by the company issued by Director of Enforcement/ RBI under FERA/FEMA/DIPB/other appropriate authority and reply submitted by the company for the said notices.	

<b>10.</b>	<b>PROSPECTUS</b>	
	a) Copy of prospectus filled with the RoC from time to time.	
<b>11.</b>	<b>DEPOSITS</b>	
	a) Whether any deposits u/s 73 & 74 of CA 2013 have been accepted by the company.	
	b) If yes, Whether the provisions of the Deposit rules u/s 73 & 74 of CA 2013 have been complied with.	
<b>12.</b>	<b>OTHERS</b>	
	a) All Statutory Registers	
	i. Register for application and allotment of shares	
	ii. Register for transfer of shares	
	iii. Register of Director, and Key Managerial Personnel	
	iv. Register of Members	
	v. Register of Charges	
	vi. Register of contracts in which directors and KMP are interested	
	vii. Register of Disclosure of Interest by the Directors	
	viii. Register for declaration of interest in the shares held by another person who is not a beneficial owner	
	ix. Register for payment of Dividend	
	x. Register for unpaid/unclaimed Dividend	
	xi. Register for Fixed Assets along with the locations of the assets	
	xii. Register of Investments, Loans, Guarantee and Securities provided by the company	
	xiii. Common Seal Register	
	xiv. Register of issue of duplicate share certificates	
	xv. Register of Debenture-holders	
	xvi. Register of buy-back of shares	
	xvii. Register of Employee Stock Options	

Name of the Company								
Forms and Returns filed by the Company pursuant to the provisions of the Companies Act, 2013 read with the Rules/ Regulations made thereunder								
Financial Year 2014 - 15								
<i>Sr. No.</i>	<i>Form No.</i>	<i>Section &amp; Rule Applicable</i>	<i>Particulars of Filing</i>	<i>Date of Filing</i>	<i>Whether filed within the prescribed time</i>	<i>In case of delay, whether prescribed procedure followed and additional fees paid</i>	<i>SRN</i>	<i>Status</i>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>
1								
2								
3								
4								
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6								
7								
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9								
10								

**Specimen Management Representation Letter  
for Secretarial Audit**

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

[XYZ Limited]

M/s ABC & CO,

Date:

Company Secretaries,

ZYZ Road,

-----

Dear Sir,

This representation letter is provided in connection with your audit of the Secretarial Records maintained under The Companies Act, 2013 (the Act) and the rules made thereunder; (ii) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder; (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder; (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings; (v) The Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act') and other applicable laws including labour laws like Factories Act, Payment of Gratuity Act etc for the year ended on 31st March, 2015 Environmental Laws and Competition Laws for the purpose required in it. We the undersigned acknowledge our responsibility for maintaining the Secretarial records referred above and confirm, to the best of our knowledge and belief, the following representations:

*Company Law*

1. The Company has maintained books of accounts as required under Section 128 of the companies Act, 2013
2. The Company has complied with all the provisions of Companies Act, 2013 relating to Statutory Audit/Cost Audit/Internal Audit.
3. No request for transfer or transmission of shares have been received by the company during the year other than as recorded
4. Statutory Registers were kept open for public inspection during working hours on all working days
5. Notice of Board meetings were duly sent to all the directors
6. No resolutions were passed by way of circulation during the year under review other than \_\_\_\_\_
7. Company has not obtained any secured loan from any financial institution/banks other than those mentioned in the register of charges
8. Notice of annual general meeting has been duly sent to all the members
9. No show cause notice has been received by the company under the Acts referred above or any other laws applicable on the company

10. Minutes of the Board and general meetings were entered in the minute books within thirty days from the day of the meeting
11. The share certificates were properly stamped
12. The entries in the statutory registers were made within the prescribed time
13. The company has not done any alteration to the Articles of Association or Memorandum of Association other than those of which the necessary compliance as to alteration is carried out and the proofs of the filing with ROC are available in Records.
14. We have provided to you all relevant information and have given access to all data and records
15. There is no pending litigation and claims other than reported in the balance sheet by way of contingent liability.
16. No event other than reported to you specifically has occurred during the year which has a major bearing on the company's affairs in pursuance of the laws, rules, regulations, guidelines, standards, etc. referred to above.
17. The views of all the dissenting Directors (if any) on important matters have been captured and recorded in the minute.
18. The venue and time of Board meeting was finalized with the consultation of all board members.
19. \_\_\_\_\_
20. \_\_\_\_\_

*Securities Laws*

1. All Price Sensitive Information was informed to the stock exchanges from time to time
2. All investors complains directly received by the company are recorded on the same date of receipt.
3. \_\_\_\_\_
4. \_\_\_\_\_

*Labour Laws*

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

*Environmental Laws*

1. The Company is not discharging the contaminated water at the public drains/rivers. The company has efficient water treatment plants at its factory premises (if applicable)
2. The company has been disposing the hazardous waste as per applicable rules

We are attaching herewith the list of various applicable laws to the company other than the laws listed above.

For XYZ Limited]

Date  
Place

Director

Director

**Sample Checklist**  
**COMPLIANCE REPORT UNDER INCOME TAX ACT**

<b>MONTHLY</b>	<b>MONTH : ..... 2014</b>		
<b>NATURE OF COMPLIANCE</b>	<b>DUE DATE</b>	<b>DATE OF COMPLAINE</b>	<b>REMARKS</b>
Payment of TDS : Salaries Director Remuneration / Sitting Fees Contractors Professional Fees Interest/Commission	07 days from the end of the month		

<b>QUARTERLY</b>	<b>QUARTER : ..... 2014</b>		
<b>NATURE OF COMPLIANCE</b>	<b>DUE DATE</b>	<b>DATE OF COMPLAINE</b>	<b>REMARKS</b>
Payment of Advance Tax Up to 15% Up to 45% Up to 75% Up to 100% Filing of Returns of TCS u/s 206C Filing of Returns of TDS Salary u/s 192 Filing of Returns of TDS on Director Remuneration u/s 194J(1)(ba) Filing of Returns of TDS Interest u/s 194A Filing of Returns of TDS Contract u/s 194C Filing of Returns of TDS Prof. Fees u/s 194J Filing of Returns of TDS Comm. u/s 194I	15.06.2014 15.09.2014 15.12.2014 15.03.2015 15 days from the end of the Quarter		

ANNUALLY		FINANCIAL YEAR ENDED : 2014-15			
NATURE OF COMPLIANCE		DUE DATE	DATE OF COMPLAINE	REMARKS	
Tax Audit u/s 44-AB		30.09.2014			
Filing of Returns of Income u/s 139(1)		30.09.2014			
Filing of Return on Specified Domestic Transactions					
Filing of Transfer Pricing Report					
<b>STATUS OF PENDING CASES /NOTICES RECEIVED:</b>					
DATE OF NOTICE REED	A.Y	CONTENTS OF THE NOTICE	AMOUNT OF DEMAND	STATUS OF ACTION TAKEN	REMARKS
<b>SPECIAL REMARKS IF ANY:</b>					

**COMPLIANCE REPORT UNDER SALES TAX ACT/ VAT ACT**

MONTHLY		MONTH: ..... 2014			
NATURE OF COMPLIANCE	DUE DATE	DATE OF PAYMENT	AMOUNT PAID	BALANCE IF ANY	REMARKS
Payment of Tax : State (VAT) C.S.T Entry Tax/ LBT Professional Tax	10 days from the end of the month				

QUARTERLY		QUARTER: ..... 2014			
NATURE OF COMPLIANCE		DUE DATE	DATE OF COMPLAINE	REMARKS	
Filing of Returns: Returns of State (VAT) Returns of C.S.T. Returns of Entry Tax Returns of Professional Tax		30 days from the end of the quarter			

<b>POSITION OF SALES TAX DUES AS ON .... / ..... / 2014</b> <b>(Rs. In Lacs)</b>					
<b>PERIOD</b>	<b>State VAT</b>	<b>C.S.T.</b>	<b>ENTRY TAX</b>	<b>TOTAL</b>	<b>REMARKS</b>

<b>STATUS OF PENDING CASES/NOTICES RECEIVED AS ON ..... / ..... / 2014</b> <b>(Rs. In Lacs)</b>					
<b>DATE OF NOTICE RECEIVED</b>	<b>A.Y.</b>	<b>CONTENTS OF THE NOTICE</b>	<b>AMOUNT OF DEMAND</b>	<b>STATUS OF ACTION TAKEN</b>	<b>REMARKS</b>

**SPECIAL REMARKS IF ANY**

**COMPLIANCE REPORT UNDER CENTRAL EXCISE ACT**

FILING OF RT-12 RETURNS (ER-1) & E.R.-6

DUE DATE: 10.07.2014

DATE OF COMPLIANCE: .... / .... / 2014

<b>STATUS OF PENDING CASES/NOTICES RECEIVED</b>					
<b>DATE OF NOTICE RECEIVED</b>	<b>A.Y.</b>	<b>CONTENTS OF THE NOTICE</b>	<b>AMOUNT OF DEMAND</b>	<b>STATUS OF ACTION TAKEN</b>	<b>REMARKS</b>

**COMPLIANCE REPORT UNDER THE FINANCE ACT, 1994 (SERVICE ACT)**

FILING OF HALF YEARLY SERVICE TAX RETURNS FOR THE HALF YEAR ENDED ON ..... 2014

DUE DATE : 25.10.2014

DATE OF COMPLIANCE : .... / .... / 2014

<b>STATUS OF PENDING CASES/NOTICES RECEIVED</b>					
<b>DATE OF NOTICE RECEIVED</b>	<b>A.Y.</b>	<b>CONTENTS OF THE NOTICE</b>	<b>AMOUNT OF DEMAND</b>	<b>STATUS OF ACTION TAKEN</b>	<b>REMARKS</b>

## **COMPLIANCE MANAGEMENT SYSTEM**

### *Prologue:*

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

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

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

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

## **COMPLIANCE MANAGEMENT SYSTEM - TEMPLATE**

### *The Objectives*

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

The objective of Compliance Management System is -

- To establish and maintain centralised mechanism to ensure compliance with all applicable laws (both Indian and International).
- To establish and maintain effective co-ordination of functional units and the compliance department under the overall supervision of the Board.
- To incorporate changes in the existing applicable laws or introduction of new laws, into the compliance process in real time manner.
- Effective communication of the changes in the regulatory mandates to the applicable functional and other units in real time manner.
- To provide training on compliance requirements at regular intervals.

- To introduce and implement ethics programmes for Board, Senior Management and other staff members.
- To establish pro-active compliance risk management culture into the organisation.
- To establish effective monitoring and control systems.
- To adopt fair market practices.
- To establish mechanisms to prevent, detect, report and to respond to non-compliances.
- To introduce effective whistle blowing mechanism.
- To establish compliance dashboard.
- .....
- .....

*The Scope*

1. A. Compliance with applicable laws
  - .....
  - .....
  - .....
  - .....

(To be kept updated and amended from time to time)
- B. Adherence to Company Specific internal policies and procedures
  - Code of Conduct
  - Code on prevention of Insider Trading
  - Policy on related party transaction
  - IT Policy
  - .....
  - .....
2. Adherence with Vision and Mission statement of the Company.
3. To devise code of conduct for Board, senior management and employees
4. Conducting training on compliance, ethics, code of conduct.
5. Establishment of Corporate Compliance Committee.
6. Appointment of Chief Compliance officer.
7. Quarterly compliance Report to be presented to the Board.
8. Identification and classification of various compliance risks.
9. Organisation of compliance Audit, feed back, remedies.
10. ....
11. ....

### *Compliance Risk*

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

### *The Chief Compliance Officer*

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

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

### *Board Level Corporate Compliance Committee*

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

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

(VII) Making recommendation to revise the compliance management programme.

*The Compliance Department*

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

*The Compliance Dashboard*

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

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

*Compliance System- Checklists*

<i>Sl. No.</i>	<i>Question</i>	<i>Yes/No</i>	<i>Intent</i>
<b><i>Board Oversight</i></b>			
1	Does the Board approve compliance of applicable Report ?		The Board should be updated quarterly Compliance with the laws at least every quarter, ensuring compliance by all functional heads and presented by Compliance department/Chief compliance officer helps in effective Board oversight.
2	Does the Board review Compliance Management programme at regular intervals ?		Compliance Management programme has to be revisited at regular intervals in tune with the business environment, regulatory changes etc.
3	Do the members make use of Compliance Dash Board effectively and act upon it when required ?		The Board Members are expected to visit Compliance Dashboard every day in over-seeing the compliance level in the organisation.
4	Is the Board updated with the applicable laws?		The Board should be updated with the applicable laws at regular intervals that helps the Board in reviewing compliance plan, overseeing compliances, reading compliance dash board etc.

<b>Chief Compliance Officer</b>			
1	Has the Company appointed Chief Compliance Officer ?		Overall Ownership should lie with an exclusive individual who has strong hold on laws, rules and regulations. Appointment of Chief Compliance Officer helps in effective co-ordination of compliances by business units.
2	Has the role of Chief Compliance officer been specifically defined?		As part of Compliance programme, the specific duties of Chief Compliance Officer be defined. This helps in casting the responsibility as well.
3	Is the Chief Compliance Officer an independent person?		Chief Compliance Officer shall be an independent person who should not have any pecuniary interest with the company and should not be associated with any specific business unit.
4	Is the Chief Compliance Officer reporting to Board?		Chief Compliance Officer reporting directly to Board helps in direct and effective communication of compliance aspects with the top management.
5	Does the Compliance Officer participate in major decisions?		The Chief Compliance officer should participate in important strategic and contractual decisions. This helps him in assessing the legal implications of the same on the company.
<b>Systems and Processes</b>			
1	Has the company put in place, a centralised mechanism for tracking and monitoring compliance?		When there are business/functional units at different locations, centralised mechanism of tracking and monitoring compliance helps in effective co-ordination of different business units.
2	Has the company put in place the process for development and approval of table of applicable laws, function wise and criticality wise?		The company should have defined process in place for updating the table of applicable laws. For example at every quarter or introduction of new law or amendment to existing law, as the case may be
3	Does the company have in-built mechanism in place for alerts whenever there is any identification of various laws and its applicability to the		The process should provide for change in the regulatory ambit applicable to the company.

	organisation, specifically based on the functions ? If so, is the implementation process for the same effectively reviewed and monitored ?		
4	Has the company paid any penalty for any compliance failure? If so, has the company made gap analysis and taken remedial measures?		The compliance mechanism should provide for no-tolerance to non-compliances. Non-compliances are to be addressed through establishing necessary controls for the same.
5	Has the company appointed designated compliance officials (Compliance owners) at unit level ?		Compliance Owners at unit level helps in ensuring compliance in the respective business units.
6	Has the company co-ordinated the activities of designated compliance official functional heads, Chief Compliance officer and the Board of Directors?		Co-ordination of unit level compliances are essential for ensuring overall compliance.
7	Is the Compliance Management System subject to periodic Audit?		The existing Compliance management should be subject to periodic audit that helps in bringing effective control.
<b>Corporate Compliance Committee</b>			
1	Has the company constituted corporate compliance committee?		Constituting the Board level Corporate Compliance Committee helps in the effective involvement of the Board in compliance management.
2	Are Functional Heads and Chief Compliance Officer participating in the meetings of Corporate Compliance Committee ?		Participation of Functional Heads and the Chief Compliance Officer in the meeting of Corporate enhances the quality of discussions and decisions.

3	Does the committee meet atleast in every quarter ?		The Committee should meet atleast once in a quarter. This may be in line with assessment
<b>Compliance Risk Management</b>			
1	Is compliance risk a part of ERM ?		Compliance risk should be classified as one of the major risks under ERM.
2	Has the company classified the compliance risk based on criticality (Legislation-wise) ?		Some non- compliances result compoundable too. The company should identify the compliances based on criticality. Compliance risks are to be assessed by Chief Compliance Officer in consultation with functional heads.
3	Are the Compliance Owners aware of financial implications of critical non-compliances ?		The Compliance Owners should be aware of implications of non- compliances.
4	Does the Company undertake Compliance Risk Analysis ?		Compliance risk analysis helps establishing effective compliance controls.
<b>Training and Communication</b>			
1	Has the company imparted training to senior management & employees on compliance programme covering regulatory aspects and the internal policies ?		Regular training helps in understanding the intent, process and consequences of compliances in better manner.
2	How does the company communicate with the employees on ethical issues ?		Reiterating on ethical issues is essential in any organisation, that would bring overall ethical culture in the organisation.

\*\*\*

# 2

## THE COMPANIES ACT, 2013

### Introduction

Companies are required to operate within the applicable legislative environment. Protection of interest of the stakeholders viz. shareholders, lenders, employees, customers, vendors, service providers, regulators, etc. is paramount.

A company will be failing in its duty and commitment to be a responsible and good corporate citizen, if it does not comply with the provisions of law. This proposition is based on the premise that every provision of law in the statute book is made in the public interest.

### GENERAL COMPLIANCE REQUIREMENTS

As per section 204 of the Companies Act, 2013 (the Act) read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and a company belonging to other class of companies as may be prescribed i.e. (a) every public company having a paid-up share capital of fifty crore rupees or more; or (b) every public company having a turnover of two hundred fifty crore rupees or more, are required to annex to its Board's report a Secretarial Audit Report, given by a company secretary in practice. Members are advised to refer to any changes in rules, which may occur from time to time.

The secretarial auditor should inter- alia verify about the Maintenance of statutory registers and records and compliances in respect of:-

- I. Memorandum and/or Articles of Association.
- II. Disclosures
- III. Issue of shares and other securities
- IV. Transfer and transmission of shares and other securities and related matters
- V. Deposits
- VI. Charges
- VII. Meetings of directors/committees thereof, security holders and other stakeholders.
- VIII. Secretarial Standards
- IX. Dividend
- X. Corporate Social Responsibility (CSR)
- XI. Directors and Key Managerial Personnel(KMP)
- XII. Loans to Directors, etc, and related party transactions
- XIII. Loans, Investments, Guarantees and Securities
- XIV. Registers, Filing of forms, returns and documents

### **Documents to be obtained/ verified for conducting Secretarial Audit**

1. Memorandum and Articles of Association.
2. Forms filed with the Registrar of Companies with receipts.
3. Share Transfer Register.
4. Forms relating to Disclosures from Directors.
5. All statutory registers.
6. Minutes of the Board, AGM, Share Transfer, Remuneration, Audit Committees and other Committees.
7. Copy of financial statement along with the Notice of AGM.
8. Notices of disclosure of directors' interests.
10. Copies of contracts made between the company and any of the related parties.
11. Shareholder List, details of Share Transfers which have taken place during the financial year.
12. Certificate from RTA stating the number of shareholders as on the close of the financial year.
13. Indebtedness Certificate signed by Company Secretary/ CFO of the Company.
14. Listing and Trading Approval(s) from Stock Exchanges.
15. Intimation to Stock Exchanges, Confirmation from National Securities Depository Limited (NSDL) and Central Depository Services (India) Limited (CDSL) for change of the name of the company, change in the face value of equity shares, etc.
16. Change of name of the company, change in the face value of the company, new ISIN No of the Company in respect of the allotment or as a result of any change in capital structure due to any corporate action taken by the Company during the financial year under audit.
17. Board Resolution for any type of corporate actions taken by the Company.
18. Corporate Action Forms filed by the Company with Depositories.
19. Equity Shareholding pattern and its break up as at the close of the financial year.
20. Any orders received by the company from the High court/Tribunal or from any other regulatory body.

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

### Checklist

#### I. MEMORANDUM AND/OR ARTICLES OF ASSOCIATION

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
<b>Alteration of memorandum</b>		
1.	The company has passed the special resolution and filed MGT.14 as per Companies (Management and Administration) Rules, 2014.	
2.	The company has altered its name with the approval of Central Government.	
3.	The company has obtained fresh certificate of incorporation from the Registrar in Form No.INC.25 as per Companies (Incorporation) Rules, 2014.	
4.	If the company has shifted the registered office from one state to another state, it is with the approval from the Central government. Check whether the order of the Central Government is filed with both the states in Form No INC 28.	
5.	<p>In case company has raised money from public through prospectus and still has any unutilised amount out of the money so raised, a special resolution has been passed by the company to change its objects for which it raised the money through prospectus—</p> <ul style="list-style-type: none"> <li>• the notice contains the details as provided in Rule 32 of the Companies (incorporation) Rules, 2014</li> <li>• the details, were published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and was placed on the website of the company, indicating therein the justification for such change;</li> <li>• the dissenting shareholders were given an opportunity to exit by the promoters and shareholders having control in accordance with regulations specified by the Securities and Exchange Board.</li> </ul>	
<b>Alteration of Articles</b>		
6.	The company has passed special resolution with respect to alteration of articles and has filed form MGT 14.	
7.	In case of conversion of a private company into a public company or vice versa, the application was filed in Form No. INC. 27	

8.	A copy of the order of the competent authority approving the alteration has been filed with the Registrar in Form No. INC.27 together with the printed copy of the altered articles within fifteen days of the receipt of the order from the competent authority.	
9.	Provision for entrenchment has been made by an amendment in the Articles, with the consent of all the members in case of a private company/by passing special resolution in case of a public company.	
10.	Every alteration made in the memorandum or articles has been noted in every copy of the memorandum or articles.	
11.	The company sends on payment of fee, a copy of each of the following documents to a member within seven days of the request being made by him- (i) the memorandum; (ii) the articles; (iii) every agreement and every resolution referred to in section 117(1) if they have not been embodied in the memorandum and articles.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked (Alteration of memorandum):**

1. Notice convening general meeting with relevant explanatory statement
2. Minutes of General Meeting
3. Annual Return
4. Financial Statement
5. Return of deposits
6. Advertisement for change in objects
7. Memorandum of Association
8. Articles of Association
9. INC23, INC24, INC25, INC26, INC28 (along with attachments)

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

1. Minutes of General Meeting
2. Memorandum of Association
3. Articles of Association
4. INC27, MGT14

## Checklist

### II. DISCLOSURES

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1.	The address of registered office of Company is displayed at its registered office and all other offices as per section 12;  Where the company has changed its name(s) during the last two years, it has affixed along with its name, the former name(s) so changed during the last two years.	
2.	Where the authorised share capital has been displayed in its official publications, the subscribed/paid-up share capital is also displayed as per section 60;	
3.	Company has disclosed its CIN, website address etc. as provided in section 12	
4.	Website of company discloses the mandatory information.	
5.	Director Identification Number of each director is mentioned while furnishing any return, information or particulars as are required to be furnished under the Act.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

#### Indicative list of documents to be checked :

- Certificate of Incorporation
- Director Identification Number
- Website of the company

#### Website disclosures under the Companies Act, 2013

<b>Section/Rules</b>	<b>Requirement as per Companies Act</b>
Sec 13(8)(i) read with Rule 32(3) of the Companies (Incorporation) Rules, 2014.	A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company, the details in respect of such resolution, shall also be placed on the website of the company, if any.

Sec 73 read with Rule 4(3) of the Companies (Acceptance of Deposits) Rules, 2014	A company intending to invite deposits shall upload a copy of circular issued to members inviting deposits on its website, if any.
Sec 91 read with Rule 10 (1) of the Companies (Management and Administration) Rules, 2014	Seven days previous notice of closure of the register of members, debenture holders or other security holders to be uploaded on the website of the company, if any, or any other website as notified by the Central Government.
Sec 101 read with Rule 18 (3)(ix) of the Companies (Management and Administration) Rules, 2014	In case notice of general meeting is sent through electronic means, such notice shall be uploaded on the website of the company, if any, or any website as notified by the Central Government.
Sec 108 read with Rule 20(3) (xiv) of the Companies (Management and Administration) Rules, 2014	In case the voting at general meeting is held through electronic mode, the results declared along with the scrutinizer's report shall be placed on the website of the company, if any, immediately after the result is declared by the Chairman.
Sec 110 read with Rule 22 (4) of the Companies (Management and Administration) Rules, 2014	Where any resolution is being passed by postal ballot, notice of postal ballot to be uploaded on the website of the company, if any, and it shall remain on the website till the last date for receipt of the postal ballot from members.
Sec 110 read with Rule 22 (13) of the Companies (Management and Administration) Rules, 2014	Where any resolution is being passed by postal ballot, the result declared along with the scrutinizer's report shall be uploaded on the website of the company, if any.
Sec 115 read with (Rule 23 (3) of the Companies (Management and Administration) Rules, 2014	Where for a resolution special notice has been given by a member of the company and it is not possible for the company to send the notice in the same manner as notice of general meeting, then apart from publishing it in the newspaper, notice shall be placed on the website of the company, if any, within seven days before the meeting.
Sec 124(2)	The company, making any transfer of an amount to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose within 90 days of making any transfer.

Sec 135(4)(a) read with rule 9 of Companies (Corporate Social Responsibility Policy) Rules, 2014	The Company shall disclose contents of CSR Policy in Board's report and also place it on its website, if any.
Sec 136(1)	A listed company shall also place its financial statements and all other documents required to be attached thereto, on its website, if any.
Sec 136(1)(a)	Every company having a subsidiary or subsidiaries shall, place separate audited accounts in respect of each of its subsidiary on its website, if any.
Sec 177(10)	Details of establishment of vigil mechanism shall be disclosed by the company on its website, if any.
Sec 230(3)	Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1) of sec 230, a notice of such meeting and every detail shall also be placed on the website of the company, if any.
Sec 160 read with Rule 13 of the Companies (Appointment and Qualification of Director) Rules, 2014	Place the notice of or intention for the candidature of a person for the office of a director on the website of the company, if any, Seven days before the general meeting
Sec 168 read with Rule 15 of the Companies (Appointment and Qualification of Director) Rules, 2014)	Information about resignation of the Director shall be posted on the website of the company, if any, within 30 days from the date of receipt of notice.
Rule 7(3) of the Companies (Prospectus and Allotment of Securities) Rules, 2014	The notice of special resolution with regard to variation in terms of contract or objects in prospectus shall be placed on the web-site of the company, if any.
Rule 20(3)(b) the Companies (Incorporation) Rules, 2014.	The existing company shall, for the purpose of license under section 8, to publish a notice in the newspaper, and shall also be uploaded on the websites as may be notified by the Central Government, within a week from the date of making the application to the Registrar
Rule 22 (1) (b) the Companies (Incorporation) Rules, 2014.	Companies registered under section 8 for the purpose of seeking conversion into any other kind shall upload a notice on the website of the company, if any, within a week from the date of making the application to the Regional Director.

**Indicative list of documents to be checked :**

- Website of the company
- Copy of documents which are uploaded on website

**Checklist****III. ISSUE OF SHARES AND OTHER SECURITIES****Private Placement U/S 42 (Read with Companies (Prospectus and Allotment of Securities) Rules, 2014**

Public and Private Company:

May allot securities as:

1. Rights issue
2. Bonus issue
3. Private placement

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
<b>Private Placement u/s 42</b>		
1.	To ensure that persons to whom offer has been made does not exceed 200 in a financial year for each kind of security.  It is to be noted that any offer or invitation made to qualified institutional buyers or to employees of the company under scheme of employees stock option shall not be considered while calculating the limit of two hundred persons.	
2.	No allotment against any previous offer / invitation of any kind of security is pending.	
3.	Company has passed special resolution for each offer / invitation (except in case of NCDs, where one resolution in a year for all offers during the year is sufficient).	
4.	Explanatory statement contains justification for price and premium, if any and requirements of section 102, if any.	
5.	Issue of a private placement offer letter was in form PAS-4.	
6.	Requirements of Private placement offer letter: <ol style="list-style-type: none"> <li>a. Was accompanied by serially numbered application form</li> <li>b. Addressed specifically to the person to whom offer is being made</li> <li>c. Sent to only such person in writing / electronically</li> </ol>	

	<p>d. Sent within 30 days of recording names in the list</p> <p>e. No person other than the addressee was allowed to apply through application form</p> <p>f. Value of offer / invitation per person was not less than Rs. 20,000 of face value of the security.</p>	
7.	Private placement was offered to such persons whose names are recorded prior to the invitation to subscribe.	
8.	The Company has maintained record of offer letters in form no. PAS-5.	
9.	Company has filed offer letter with ROC in form no. PAS-3 along with record of offer letters within 30 days of circulation of offer letter.	
10.	Amount against offer to be received only by cheque / demand draft / other banking channels but not by cash - only from the bank account of the subscriber.	
11.	Company to maintain record of the bank account from which payments received. Ensure that payment has been made from the bank account of the person subscribing to such securities.	
12.	In case of joint holders, payment was received from first applicant only	
13.	Allotment was completed within 60 days from date of receipt of application form. If not ,application money repaid within 15 days of completion of 60 days. If not repaid, the application money along with interest at 12 percent per annum from expiry of 60th day was paid.	
14.	Board resolution to specifically contain authority for issuance of share certificates to two directors and CS / one authorized person. One of the two directors should be director other than MD / WTD.	
15.	Share application money to be kept in separate bank account and was utilized only for (a) adjustment against allotment or (b) repayment.	
16.	Company filed Return of allotment in form PAS-3 within 30 days.	
17.	Share certificates were issued within 2 months of allotment of shares / 6 months of allotment of debentures.	

18.	In case of contravention, money was refunded within 30 days of order imposing the penalty.	
19.	Company has made entry in Register of Members.	

**Indicative list of documents to be checked :**

- Minutes of Board Meeting
- Notice convening general meeting with relevant explanatory statement
- Register of members
- Board resolution authorising person to sign certificate
- PAS-3, PAS-4, PAS-5, MGT-14

**PREFERENTIAL ALLOTMENT U/S 62**

Applicable to Private and Public Company

Kinds of securities covered:

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

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

I.	<p>Existing equity shareholders in proportion to the paid up share capital held by them.</p> <p>Procedure to be followed:</p> <ol style="list-style-type: none"> <li>a. Letter of offer to be sent to existing equity shareholders as notice by registered post/ speed post / electronic mode at least 3 days before opening of the issue</li> <li>b. Contents of letter of offer : (1) Specify number of shares offered (2) time limit of minimum 15 and maximum 30 days from date of offer within which the offer if not accepted, would be deemed to have been declined (3) offer to include a right exercisable by person concerned to renounce the shares offered to him in favour of any other person</li> <li>c. On expiry of period / renunciation, Board may dispose of the shares in a manner not disadvantageous to the company and the shareholders</li> <li>d. Ensure that the allotment was made within 60 days from the date of receipt of the share application money to comply with Companies ( Acceptance of Deposits) Rules, 2014</li> </ol> <p>In case of any preferential offer made by a company to one or more existing members only, the provisions of sub-rule (1) and proviso to sub-rule (3) of rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply.</p>	
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	Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 deals with private placement.	
II.	Employees under ESOP Scheme; subject to prior special resolution and the conditions specified in Rule 12 of the Companies (Share Capital and Debenture) Rules, 2014	
III.	Any persons: (1) subject to prior special resolution; (2) either for cash or for consideration other than cash, (3) if price is determined by valuation report of registered valuer.	

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

**Indicative list of documents to be checked :**

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

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

**(I) unlisted public companies**

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

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1.	Whether the company has passed the special resolution as required under section 62 (1) (b) of the Companies Act, 2013.	
2.	If passed, check the copy of the special resolution for approving the scheme of ESOP.	
3.	Check whether special resolution has been filed with ROC in Form No. MGT.14 as per Companies (Management and Administration) Rules, 2014.	
4.	Check that the explanatory statement to the notice of the meeting contains the disclosures required to be made under the sub-rule (2) of rule 12 of Companies (Share Capital and Debentures) Rules, 2014.	

5.	Check that the Director's Report contains the disclosures required to be made in such report under sub-rule (9) of the rule 12 of Companies (Share Capital and Debentures) Rules, 2014.	
6.	Verify the Register of Employee Stock Options maintained in Form No. SH.6 of Companies (Share Capital and Debentures) Rules, 2014 and that the register is duly authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

- Minutes of Board Meeting
- Special Resolution approving ESOP alongwith explanatory statement
- Minutes of General meeting
- Board's Report
- Register of Employee Stock Option (Form SH-6)
- PAS-3, MGT-14

**Procedure for issue of shares to any persons other than existing equity shareholders u/s 62 (1) (c) (taking into account procedure u/s 42 also) :**

1.	Prepare a list of persons (not exceeding 200 in a financial year for each kind of security) to whom offer may be made.	
2.	Ensure that no allotment against any previous offer/ invitation of any kind of security is pending.	
3.	Issue to be authroised by AOA.	
4.	Pass special resolution for such issue.	
5.	Explanatory statement to contain justification for price and premium, if any and also other matters as prescribed by the rules.	
6.	Determine issue price by valuation report of registered valuer / independent merchant banker/ independent CA having experience of ten years.	
7.	The issue price not to be less than the price determined on the basis of valuation report.	
8.	Only fully paid securities can be issued.	
9.	Issue an offer letter in Form No.PAS-4.	
10.	Requirements of Offer letter: <ul style="list-style-type: none"> <li>a. To be accompanied by serially numbered application form</li> <li>b. Addressed specifically to the person to whom offer is being made</li> </ul>	

	<ul style="list-style-type: none"> <li>c. Sent to only such person in writing / electronically</li> <li>d. Within 30 days of recording names in the list</li> <li>e. No person other than the addressee allowed to apply through application form</li> <li>f. Value of offer / invitation per person not less than Rs. 20,000 of face value of the security</li> <li>g. To also comply with requirement of contents of notice about renunciation etc.</li> </ul>	
11.	Maintain record of offer letters in Form No. PAS-5.	
12.	File offer letter with ROC along with record of offer letters within 30 days of circulation of offer letter.	
13.	Amount against offer to be received only by cheque / demand draft / other banking channels but not by cash – only from the bank account of the subscriber.	
14.	Company to maintain record of the bank account from which payments received.	
15.	In case of joint holders, payment was received from first applicant only.	
16.	Allotment was completed within 12 months from date of passing special resolution. If not, another special resolution was passed to complete allotment.	
17.	Where convertible securities are offered, price of resultant shares shall be determined beforehand on basis of valuation report.	
18.	Board resolution to specifically contain authority for issuance of share certificates to 2 directors and CS / one authorized person. One of the two directors should be director other than MD / WTD.	
19.	Share application money was kept in separate bank account and was utilized only for (a) adjustment against allotment or (b) repayment.	
20.	Return of allotment in Form No. PAS-3 within 30 days.	
21.	Share certificates to be issued within 2 months of allotment of shares / 6 months of allotment of debentures.	
22.	Entry in Register of Members.	

23.	In case of consideration other than cash, accounting treatment as specified in Rules, was complied.	
24.	In case a charge is required to be created in connection with the issue of the securities, check if the same has been done in accordance with the provisions of the Act and other applicable legal requirements and prescribed returns have been filed.	
25.	In case of listed company, regulations made by SEBI has been complied with (Checklist given in separate chapter of SEBI Regulations)	

Checked by:

Reviewed by:

Date:

Date:

**Indicative list of documents to be checked :**

- Minutes of Board Meeting
- Special Resolution with Explanatory Statement and minutes thereof
- Articles of Association
- Valuation Report
- Copy of offer letter
- Record of Bank account from where payments for subscription have been received
- Board resolution giving authority to sign the share certificates
- Register of members
- Board's Report
- PAS-3, PAS-4, PAS-5, SH-6, MGT-14

**Checklist : Issue of Capital and Securities**

Sl. No.	Particulars	Remarks
<b>Bonus issue (section 63)</b>		
1.	Check whether it is authorised by its articles;	
2.	Whether it has, on the recommendation of the Board, been authorised in the general meeting of the company;	
3.	Whether the company has defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;	
4.	Whether it has defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;	
5.	Whether the partly paid-up shares, if any outstanding on the date of allotment, have been made fully paid-up;	

6.	Whether the bonus is declared only out of a. Free reserves b. Securities Premium Account c. Capital Redemption Reserve Account and not out of revaluation reserve created out of revaluation of assets.	
7.	Ensure that the company which has once announced the decision of its Board recommending a bonus issue does not subsequently withdraw the same;	
8.	Check whether Return of allotment is filed with the registrar in Form No. PAS.3	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

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

**Checklist: Issue of Sweat Equity Shares (Section 54)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1.	Section 2 (88) defines "sweat equity shares" so as to mean 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	
2.	In case of Listed Company, ensure that the issue of Sweat Equity Shares is in compliance with the SEBI (Issue of Sweat Equity) Regulations, 2002.	
<i>In case of an unlisted company</i>		
3.	The issue is authorised by a special resolution passed by the company, ensuring that the special resolution authorising the same is valid for making the allotment within a period of not more than twelve months from the date of passing of the special resolution.	
4.	Explanatory statement to be annexed to the notice of the general	

	meeting contains the specified particulars [Rule 8 of the Companies (Share Capital and Debenture) Rules, 2014].	
5.	Not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business.	
6.	The company has not issued sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher. Further it is to be ensured that the issuance of sweat equity shares in the Company has not exceeded twenty five percent, of the paid up equity capital of the Company at any time.	
7.	The Sweat Equity Shares to be issued are valued at a price determined by a registered valuer.	
8.	The Sweat Equity Shares issued are locked in / non transferable for a period of three years from the date of allotment. The fact and the period of lock in is stamped in bold on such share certificates.	
9.	The amount of Sweat Equity shares issued is included as a part of managerial remuneration while calculating the limits. 10.Details as per Rule 8(13) of Companies ( Share Capital and Debentures) Rules, 2014 of the Sweat Equity shares are mentioned in the Director's Report .	
10.	The company is maintaining Register of Sweat Equity Shares in Form No. SH.3	
11.	The Register of Sweat Equity Shares is maintained at the registered office of the company or such other place as the Board may decide.	
12.	The entries in the register are authenticated by the Company Secretary of the company or by any other person authorized by the Board for the purpose.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

- Minutes of Board Meeting
- Special Resolution with Explanatory Statement
- Minutes of General meeting
- Approvals of registration from sectoral regulators such as RBI, SEBI etc.
- Valuation Report
- Board's Report
- INC-21, SH-3
- PAS-3, MGT-14

**Checklist : Calls on Shares/Debentures**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1.	call on shares/debentures was made by the Board of directors by means of resolutions passed at the Board meeting;	
2.	call on shares/debentures complied with the stipulations contained in the Articles of Association;	
3.	the Board of directors approved the rate of interest payable on delayed payment of calls in conformity with the provisions contained in the Articles of Association.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

- Minutes of Board meeting
- Articles of Association
- Copies of Call letter
- Proof of dispatch of call letters

**Checklist : Buy-back of Shares / Securities (Section 68)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
<b>Buy Back by Unlisted companies :</b>		
1.	The offer for buy back is not made within 1 year of closure of preceding offer of buy back.	
2.	The Articles of association authorize buy back of securities. If not, a special resolution for amending the articles of association under section 14 of the Companies Act, 2013 has been passed by the company in general meeting.	
3.	Form No. MGT.14 as per Companies (Management and Administration) Rules, 2014 has been filed with RoC within 30 days of passing the special resolution.	
4.	In case, buy back of securities are upto 10% of total paid up equity capital & free reserves, whether a board resolution was passed authorizing the buy-back.	
5.	A special resolution has been passed in general meeting, authorizing the board to buy-back. <i>(Note: This is not applicable in case the buy- back is ten percent or less of the paid up capital and free reserves of the company)</i>	

6.	The explanatory statement is required to be annexed to the notice of general meeting pursuant to section 102 contains the disclosures mentioned in the rule 17 (1) of the Companies (Share Capital and Debentures) Rules, 2014 in this behalf. <i>[Note: Refer Rule 17(1)]</i>	
7.	After passing of special resolution but before buy-back, the letter of offer has been filed with RoC in Form No. SH.8 with the requisite fee.	
8.	The letter of offer has been dated and signed on behalf of the board by not less than two directors of the company, one of whom shall be the managing director, where there is one.	
9.	The shares or other securities so bought back are extinguished and physically destroyed within seven days of the completion of buy-back.	
10.	The declaration of solvency required pursuant to section 68 (6) of the Companies Act, 2013 has been filed in Form No. SH.9 as per Companies (Share Capital and Debentures) Rules, 2014 with RoC.	
11.	The declaration of solvency has been signed and verified by atleast two directors, one of whom shall be the managing director of the company, if any.	
12.	The company maintains a register of shares or other securities which have been bought back in Form No. SH. 10 as per Companies (Share Capital and Debentures) Rules, 2014.	
13.	The company has filed a return within 30 days of completion of buy-back in Form No. SH.11 as per Companies (Share Capital and Debentures) Rules, 2014 with RoC and in case of a listed Company with the Securities and Exchange Board of India.	
14.	The certificate of compliance in Form No. SH.15 signed by two directors of the company including the managing director, if any, and verified by Company Secretary in Practice is annexed to the return filed with RoC in Form No. SH.11.	

15.	The company has not issued shares of the same kind within a period of 6 months except by way of bonus issue or discharge of subsisting obligation.	
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*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

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

**Checklist : Debentures (Section 71)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1.	<p>An issue of secured debentures may be made, provided the date of its redemption does not exceed ten years from the date of issue.</p> <p>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 (Rule 18 Companies (Share Capital and Debentures) Rules, 2014.</p> <ul style="list-style-type: none"> <li>• In case of any issue of <b>debentures by a Government company</b> which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge shall not apply.</li> <li>• In case of any <b>loan taken by a subsidiary company</b> from any bank or financial institution, the charge or mortgage may be created on the properties or assets of the holding company.</li> </ul>	
2.	The company has appointed a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures.	

3.	A trust deed in Form No. SH. 12 or as near thereto as possible has been executed by the company issuing debentures in favour of the debenture trustees within three months of closure of the offer.	
4.	The company has created a Debenture Redemption Reserve for the purpose of redemption of debentures in accordance with the conditions specified in sub rule (7) of rule 18 of the Companies (Share Capital and Debentures) Rules, 2014.	
5.	In case, any amount received by a company against issue of commercial paper or any other similar instrument issued in accordance with the guidelines or regulations or notification issued by the Reserve Bank of India, Rule 18 shall not apply.	
6.	In case of any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations or directions issued by the Reserve Bank of India, Rule 18 shall not apply, unless otherwise provided in such Scheme or regulations or directions.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

- Minutes of Board Meeting
- Notice alongwith explanatory statement
- Minutes of General meeting
- Charge documents
- Prospectus or letter of offer for subscription of debentures
- Written consent from debenture trustee
- Requisition signed by debenture holders for meeting
- Trust deed (SH-12)
- Financial Statement

**Checklist : Issue and redemption of preference shares (section 55)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1.	A company is authorized by its articles to issue preference shares.	
2.	The preference shares shall be liable to be redeemed within a period not exceeding twenty years. A company engaged in the setting up and dealing with or infrastructure projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum	

	of ten per cent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.	
3.	The issue of preference shares has been authorized by passing a special resolution in the general meeting of the company;	
4.	The explanatory statement to be annexed in the notice of general meeting shall provide complete material facts concerned with and relevant to the issue of preference shares including details mentioned in sub-rule (3) of rule 9 of the Companies (Share Capital and Debentures) Rules, 2014.	
5.	The company, at the time of such issue of preference shares has no subsisting default in the redemption of preference shares issued either before or after the commencement of the Act or in payment of dividend due on any preference shares.	
6.	The resolution for issue of preference shares has set out the following matters: (a) priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares; (b) participation in surplus dividend; (c) participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid; (d) payment of dividend on cumulative or non-cumulative basis. (e) conversion of preference shares into equity shares. (f) voting rights. (g) redemption of preference shares.	
7.	All the terms of issue of Preference shares other than those prescribed , such as when the preference dividend shall be due etc are clearly defined	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

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

## Checklist

### IV. TRANSFER AND TRANSMISSION OF SHARES AND OTHER SECURITIES AND RELATED MATTERS.

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
<b>Issue of Certificates for Shares and other Securities (Section 46)</b>		
1.	The company has allotted shares/debentures and entered the names of allottees in the register of members/debenture holders;  (Note: where the register and index of beneficial owners is maintained by a depository it shall be deemed to be corresponding to the register of members)	
2.	The company has issued and delivered share certificates as per section 46 of the Act;	
3.	The company has executed Debenture Trust Deed in case of secured debentures;	
4.	The company has complied with delivery of certificates within the time limits prescribed under section 56(4).	
5.	Proper stamp duty has been paid.	
6.	The certificates are issued in accordance with the provisions of the Articles of Association.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

#### **Indicative list of documents to be checked :**

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

#### **Checklist: Transfer and Transmission of Shares (Section 56)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
I.	<b>Transfer of Shares</b>	
1.	The requirements contained in the Articles of Association have been complied with;	

2.	The transfer of shares/debentures and the issue of certificates thereof have been made within the time stipulated under section 56 in accordance with the procedures prescribed;	
3.	The company receives instrument of transfer in Form No.SH-4 in respect of physical form of securities.	
4.	An application has been made in respect of partly paid up shares of the company. If yes, the company has given notice of application in Form No. SH-5 to the transferee and received no objection to the transfer.	
5.	The company has taken indemnity in respect of instrument of transfer that has been lost or not delivered within the prescribed limit.	
6.	Entries in the register of transfers have been made from time to time.	
7.	All transfers have been properly included in the Annual Return.	
<b>II.</b>	<b>Transmission of shares</b>	
8.	The shares have been transmitted to the legal representative of the deceased shareholder in the case of death of a sole shareholder and in the case of joint holdings only to the survivor(s).	
9.	Transmission of shares is effected upon the production of succession certificate or probate or letter of administration or indemnity duly signed by the legal heirs of the deceased or as per procedure stipulated by the Board of directors and/or Articles of Association.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

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

## Checklist

### V. DEPOSITS (Chapter V)

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1.	The Company has not accepted any deposits which is repayable on demand or upon receiving a notice within a period of less than six months or more than 36 months from the date of acceptance or renewal of deposit. If, so accepted, the company has complied with the conditions prescribed in rule 3 of the Companies (Acceptance of Deposits) Rules, 2014.	
2.	The company referred to in section 73(2) has issued circular to all its members by registered post acknowledgement due or speed post or by electronic mode in Form No. DPT-1, while intending to invite deposits from them.	
3.	The company referred to section 76, being an eligible Company as defined under the Rules, has issued circular in the form of advertisement in Form DPT-1.	
4.	The form of application contains a declaration by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.	
5.	Whether the company filed Return of deposits with the Registrar in Form No. DPT-3	
6.	The company (accepting deposits from members or eligible companies) has entered into a contract for providing deposit insurance as prescribed in Rule 5.	
7.	The company has provided for security by way of charge as prescribed in Rule 6.	
8.	The company has executed deposit trust deed in Form No. DPT-2 at least seven days before issue of circular or advertisement.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

#### Indicative list of documents to be checked

- Circulars inviting deposits (DPT- 1)
- Newspaper clippings
- Minutes of board meetings
- Contract of deposit insurance
- Instrument creating charge
- Written consent from trustee for depositors
- Deposit trust deed (DPT-2)
- Written requisition calling meeting of depositors

- Application form for deposits
- Receipts of amount received by company
- Register of deposits
- Return of deposit (DPT-3)
- Statement regarding deposits (DPT-4)
- Financial statement

### Checklist

#### VI. CHARGES (Chapter VI)

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

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

#### Indicative list of documents to be checked

- Minutes of Board Meeting
- Instrument creating / modifying charge (CHG-1 or CHG-9)
- Application for delay (CHG-1)

- Certificate of Registration (CHG-2)
- Certificate of modification (CHG-3)
- Register of charge
- Satisfaction of charge (CHG-4)
- Certificate of registration of satisfaction (CHG -5)
- Notice of appointment/ Cessation of securities (CHG-6)
- Copy of filing of order (INC-28)
- Register of charges (CHG-7)
- Application for Condonation of delay (CHG-8)

### Checklist

#### VII. MEETINGS OF DIRECTORS/COMMITTEES THEREOF, SHAREHOLDERS AND OTHER STAKEHOLDERS.

[**Note:** Adherence by a company to Secretarial Standards with respect to General and Board meetings specified by the Institute of Company Secretaries of India and approved as such by the Central Government is mandatory, as per the provisions of sub-section (10) of Section 118 of the Companies Act, 2013.

In terms of section 205(1)(6), it is the function of the Company Secretary to ensure that the company complies with the applicable Secretarial Standards. The Company Secretary in Practice, while carrying out secretarial audit must, therefore, examine compliance with the applicable clauses of the Secretarial Standards.

Separate chapter namely 'Secretarial Standards under the Companies Act, 2013' is provided in this Guidance Note.]

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
<b>Meetings of directors/committees</b>		
1.	the requisite number of Board meetings as required under section 173 the Act were held during the year;	
2.	notice of each Board meeting in writing was issued to all the directors;	
3.	attendance records are maintained and the requirements of Board meetings regarding quorum, chairman, minutes etc., have been complied with and leave of absence is granted to Directors who have requested for the same;	
4.	the items required to be transacted only at the meeting of the Board were transacted at the meeting. Following is the list of resolutions which are required to be passed only at the board meeting:  a) Resolutions for exercising following powers: i. Make call ii. Buy back of securities	

	<ul style="list-style-type: none"> <li>iii. Issuing securities</li> <li>iv. Borrowing monies</li> <li>v. Investing funds</li> <li>vi. Granting loans/ giving guarantees/providing securities</li> <li>vii. Approving financial statement and Board's report</li> <li>viii. Diversifying business</li> <li>ix. Approving amalgamation / merger / reconstruction</li> <li>x. Taking over of a company/acquiring control in substantial stake in another company.</li> <li>xi. Making political contributions</li> <li>xii. Appointing or removing KMP</li> <li>xiii. Appointing internal auditor</li> <li>xiv. Appointing secretarial auditor</li> <li>xv. Serial No. (i to x) are as per section 179(3) and Serial No. (xi-xiv) above are as per Companies (Meetings of Board and its Powers) Rules, 2014.</li> </ul>	
5.	Form MGT 14 has been filed for every such resolution passed at the Board Meeting	
6.	Whenever a director is appointed on the Board , he has given a Disclosure of Interest in Form MBP 1and every time thereafter when there is any change therein.	
7.	Every director has disclosed his interest at the Board meeting where contract or arrangement is considered in which he is directly or indirectly interested and the interested director has abstained from participating or voting at such meeting.	
8.	The notices of disclosure of general interest under section 184 have been received from all the directors in form no. MBP-1 and were, placed before and read at the first Board meeting in each financial year.	
9.	Entries thereof have been made in the Register of Contracts or arrangements in which Directors are interested in pursuance to section 189 and noted by the Board and such disclosures have been renewed every year;	
10.	If the Board had constituted any committees; whether requirements regarding quorum, chairman, minutes, etc., of committee meetings were duly complied with;	
11.	Resolutions by circulation have been approved in accordance with the provisions of the Act and in cases where it was required by the requisite number of Directors to be taken up at a Board meeting, whether the same has been taken up at a Board meeting;	

12.	The resolutions passed by circulation were put up at the next Board meeting for taking note of the same and has been made part of the minutes;	
13.	All directors have given a declaration in Form DIR-8 about their not being disqualified to act as a Director at the beginning of each financial year and such declarations have been placed before the Board and taken note of;	
14.	Independent Directors have given declaration about having met the criteria of independence.	
15.	The director has attended atleast one board meeting in a year either in person or through video conferencing.	
16.	Whether the company follows sufficient Board practices to ensure meaningful participation of Board members.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

- Notice of Board Meetings / Committee Meetings.
- Intimation to stock exchanges regarding Meetings of Directors.
- Proof of sending notice of Board Meeting.
- Minutes of Board Meetings/ Committee Meetings.
- Declaration of independence by Independent directors.
- DIR-8, MBP-1, MBP-2, MBP-4

**Checklist on Meetings of Board through video conferencing or other audio visual means (Section 173 read with Rule 3 and Rule 4 of the Companies (Meeting of Board and its Powers) Rules, 2014)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The company has made necessary arrangements to avoid failure of video or audio visual connection	
2	Sufficient security and identification procedures were ensured to safeguard the integrity of the meeting by the Company Secretary/Chairman.	
3	The Chairman/Company Secretary has taken reasonable care to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting.	

4	Proper arrangements were made to record proceedings and prepare the minutes of the meeting.	
5	Proper arrangement were made for safekeeping and marking the tape recording(s) or other electronic recording as part of the records of the company.	
6	Proper system security and physical security arrangement were made to ensure that no person other than the concerned director(s) is attending or has access to the proceedings of the meeting through video conferencing mode or other audio visual means.	
7	Participants attending the meeting through audio visual means were able to hear and see the other participants clearly during the course of the meeting:	
8	The differently abled director was allowed a person to accompany him at his request and it was ensured that such person maintains confidentiality of the matters discussed at the meeting.	
9	The notice of the meeting was sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Companies Act, 2013.	
10	The notice of the meeting contained the information regarding the option available to the directors to participate through video conferencing mode or other audio visual means, where the facility is provided by the company.	
11	The intention of the director intending to participate through video conferencing or audio visual means was received by the Chairperson or the company secretary of the company well in advance.	
12	At the commencement of the meeting, a roll call was taken by the Chairperson when every director participating through video conferencing or other audio visual means stated the following namely:- <ul style="list-style-type: none"> <li>(a) name;</li> <li>(b) the location from where he was participating;</li> <li>(c) that he had received the agenda and all the relevant material for the meeting; and</li> <li>(d) that no one other than the concerned director was attending or having access to the proceedings of the meeting at the location mentioned in clause (b).</li> </ul>	

13	After the roll call, the Chairperson or the Company Secretary informed the Board the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirmed that the required quorum was complete.	
14	The required disinterested quorum was present throughout the meeting.	
15	The participating Directors had given their consent for recording of their signature in the statutory registers where such registers are required to be signed by them and it was so recorded in the minutes.	
16	The participating director introduced himself at the time of speaking on any agenda item and in case of any interruption, the director repeated his statement.	
17	In case of an objection on a motion, roll call was made by the Chairperson and vote of each director was recorded only on identification by the director.	
18	At the end of discussion on each agenda item, the Chairperson of the meeting announced the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority. The minutes of the meeting had disclosed the particulars of the directors who attended the meeting through video conferencing or other audio visual means.	
19	The draft minutes of the meeting were circulated among all the directors within fifteen days of the meeting.	
20	Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, has confirmed or given his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.	
21	After completion of the meeting, the minutes had been entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.	
	None of the following matters were dealt with in the meeting held through video conferencing or other audio visual means.-	

	<ul style="list-style-type: none"> <li>(i) the approval of the annual financial statements;</li> <li>(ii) the approval of the Board's report;</li> <li>(iii) the approval of the prospectus;</li> <li>(iv) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board; and</li> <li>(v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.</li> </ul>	
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*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### **Checklist**

#### **Minutes Book of Meetings of Directors/Members (Section 118)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1.	All appointments made at the meeting are included in the minutes.	
2.	Names of the directors who are present at the meeting are recorded in the minutes.	
3.	Names of the directors dissenting from or not concurring were recorded.	
4.	The pages of the minutes book have been consecutively numbered.	
5.	Each page of minutes of proceedings of a meeting of the Board or of a committee thereof is initialled or signed and the last page of the record of proceedings of each meeting is dated and signed by the chairman of the said meeting or the chairman of the next succeeding meeting.	
6.	Each page of minutes of proceedings of a general meeting is initialled or signed and the last page of the record of proceedings of each meeting is dated and signed by the chairman of the same meeting or by a director authorized within the aforesaid period of thirty days.	
7.	The minute books of general meetings, meeting of creditors, the minutes books of the Board and committee meetings are maintained in the custody of the company secretary or any director duly authorised by the Board. Ensure Resolutions passed by postal ballot are recorded in the minute book of General Meetings.	
8.	In case directors have participated in any Board Meeting by video conference or other audio visual means check, whether complied with the checklist relating to meetings of Board through video conferencing or other audio visual means.	

**Checklist : ANNUAL GENERAL MEETING - Notice, Conduct of the meeting and minutes (Section 96)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
<b>Annual General Meeting</b>		
1	The provisions of section 96 of the Companies Act. 2013 read with the Companies (Management and Administration) Rules, 2014, Listing Agreement, if applicable, etc have been complied with.	
2	The first AGM is held within a period of nine months from the date of closing of the first financial year of the company.	
3	Subsequent AGM was held in each case, within a period of six months from the date of closing of the financial year.  The provision of Section 91 of the Companies Act read with Companies (Management and Administration) Rules, 2014. Listing Agreements if applicable have been complied with.	
4	The meeting was held within 15 months of the last annual general meeting.	
5	AGM was called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.	
6	The AGM was held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.	
7	Notice convening the meeting specifically mentioned that it was AGM.	
8	Extension for holding the meeting was obtained from the Registrar, where applicable.	
9	In case of requisitioned meeting, provisions of section 100 read with rule 17 of the Companies (Management and Administration) Rules, 2014 were complied with.	
10	Notice of 21 clear days was given for the meeting.	
11	Consent of atleast 95% of the members was obtained for convening the meeting at shorter notice.	
12	Day, Date and hour of the meeting were mentioned in the notice alongwith the statement of business to be transacted.	
13	Notice was given to  a. Every member/ assignee of insolvent member/legal representative of the deceased member	

	<p>b. Auditor</p> <p>c. Director</p>	
14	Explanatory statement setting out material facts was attached to the notice in respect of special business as contemplated by section 102.	
15	Appropriate quorum i.e. 2/5/15/30 as the case may be, was present at the meeting.	
16	If meeting was adjourned for want of quorum, section 103(2) was complied with.	
17	The provisions of the articles as to Chairman were complied with.	
18	None of the proxies represented more than 50 members.	
19	Appropriate statement in respect of proxies appeared in the notice.	
20	Instrument of proxy was in the prescribed form.	
21	Inspection of Proxy register was offered to the members within 24hours before the meeting as well as during the meeting.	
22	None of the members was prevented from voting except where company had exercised its right of lien/ calls were due.	
23	Voting through electronic means was carried out in compliance with relevant rules.	
24	Poll was conducted in compliance with section 109.	
25	Postal Ballot was conducted in compliance with the provisions of section 110.	
26	Members' resolution were circulated in compliance with section 111.	
27	Resolution requiring special notice had the backing of members holding atleast 1% of the voting power/holding shares of Rs. 5,00,000. Secretarial Standards with regard to AGM has been complied with.	
28	Report of Annual General Meeting was filed in Form MGT 15 by all the listed public companies within 3days of the conclusion of AGM.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

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

**Checklist****IX. DIVIDEND (Chapter VIII)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The amount of dividend, including interim dividend, was deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.	
2	The company has paid dividend within 30 days from the date of declaration.	
3	The company has transferred the total amount of dividend which remains unpaid or unclaimed within 30 days from the date of declaration to unpaid dividend account, within seven days from the expiry of the said 30 days.	
4	The company has prepared a statement containing the names and other details to whom the unpaid dividend is to be paid alongwith the amount of unpaid dividend and place the same on the website of the company and also on any other web-site approved by the Central Government for this purpose, within 90 days.	
5	In case of inadequate profits or absence of profits, the rate of dividend declared has not exceeded the average at the rates at which dividend was declared by it in the three years immediately preceding that year.	
6	The company has not declared and paid any dividend from reserves other than free reserves as defined in section 2(43).	
7	Ensure that carried over previous losses and depreciation not provided in previous year(s) are set off against profits of the Company of the current year.	

8	The dividend is paid by the company by cheque or warrant or by any electronic mode.	
9	The company has before declaration of dividend transferred such percentage of profits to reserves as decided.	
10	The company has transferred the amount remaining unpaid or unclaimed for a period of seven years from the date of transfer to the Unpaid Dividend Account to the Investor Education and Protection Fund and has filed the Statement of amounts credited to IEPF in Form No. DIV-5.	
11	The company has followed the procedures prescribed in Rule 3 before the dividend is declared out of reserves (as applicable).	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

#### **Indicative list of documents to be checked**

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

#### **Checklist**

#### **X. CORPORATE SOCIAL RESPONSIBILITY (CSR)**

**[Section 135 read with Companies (Corporate Social Responsibility) Rules, 2014]**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year has constituted a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director is an independent director.	
2	The Board has approved the CSR Policy including a list of CSR projects or programmes within the purview of schedule VII as well as the monitoring process of such projects or programmes as recommended by CSR Committee.	

3	The Composition of CSR Committee is disclosed in the Board's Report.  The CSR activities were under taken as per its stated CSR policy, as projects, programs or activities excluding activities undertaken in pursuance of its normal course of business.	
4	The company has instituted a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.	
5	The company has disclosed the contents of the policy in Board's report and at its website, if any.  The Board's report includes an annual report on CSR containing prescribed particulars.	
6	In case the company does not spend the specified amount (i.e. at least two percent of the average net profits made during the immediately preceding three financial years), Board's report specifies the reason for not spending.	
7	The company has complied with the procedure specified under rules.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### **Indicative list of documents to be checked**

- Indicative list of documents to be checked:
- Balance sheet and P&L account
- Minutes of Board Meeting
- Minutes of CSR Committee
- Company website, if any.

### **Checklist**

#### **XI. DIRECTORS AND KEY MANAGERIAL PERSONNEL (KMP)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The number of directors is as per the provisions of section 149 of the Act.	
2	Under Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014), the company has appointed at least one	

	woman director, if the company falls under any one of the following categories - (i) a listed company; (ii) other public company having - (a) paid-up share capital of one hundred crore rupees or more; or (b) turnover of three hundred crore rupees or more:	
3	The company being a listed company has at least one-third of the total number of directors as independent directors or such higher number as specified in the listing agreement.	
4	If the company falls under the following class or classes of companies, whether the company has at least two directors as independent directors - (i) the Unlisted Public Companies having paid up share capital of ten crore rupees or more; or (ii) the Unlisted Public Companies having turnover of one hundred crore rupees or more; or (iii) the Unlisted Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:	
5	In case it is a listed company, whether it has any director elected by small shareholders and if so, whether such appointment is in compliance with rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014).	
6	The company is following the provisions for determination of office of directors by retirement by rotation (Section 152).	
7	The company has ensured the eligibility of directors for election to the office of a director (Section 160).	
8	The appointment of additional director, alternate and nominee director, filling up of casual vacancies has been done as provided in section 161.	
9	The company has ensured that the appointment of directors is voted individually (Section 162).	
10	The company has received the consent to act as directors (Section 152) and Form DIR.2 was filed for appointment of director.	
11	None of the directors is disqualified from being appointed as a director (Section 164).	
12	None of the directors has vacated office during the year (Section 167).	

13	The provisions of section 168 were complied with at the time of resignation of director.	
14	None of the directors was removed from the Board.	
15	If the company is either a listed company or any other public company having a paid-up share capital of ten crore rupees or more, if yes, it has appointed whole-time key managerial personnel and filed a return as per DIR 12 with registrar within thirty days of such appointment or of any changes therein.  A company other than the companies covered above, which has a paid up share capital of five crore rupees or more, has appointed a whole-time company secretary.	
16	Appointment of key managerial personnel is made by a board resolution.	
17	If the company has appointed a managing director, whole-time director or manager, whether it has complied with the provisions of Chapter XIII of the Act read with Schedule V.	
18	Whether the company has complied with section 203 with respect to appointment of a manager or managing director.	
19	Check whether the provisions relating to appointment and remuneration of Managerial Persons are complied under sections 196, 197, 203 and Schedule V.	
20	Ensure that as per section 197, the total managerial remuneration payable by a public company does not exceed 11% of the net profits of the company and where the limit is exceeded, the same is approved in general meeting and approved by the Central Government. It must be noted that if a company has no profits or when its profits are inadequate, the company shall pay no remuneration to its directors, except in accordance with schedule V.	
21	Ensure that the procedural aspects relating to appointment of managing director or whole-time director or manager including the filing of the necessary returns are complied with.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

#### **Indicative list of documents to be checked**

- Articles of Association
- Minutes papers of Board Meetings
- Notice and minutes of Annual General Meeting, Report of AGM
- Register of directors and KMP
- DIR-2, DIR-6, DIR-8, DIR-9 (if any), DIR-10 (if any), DIR-11, DIR-12

- Declaration of independence given by Independent Directors
- Filings with Stock Exchanges
- Balance sheet and P&L account and Board's Report

**Checklist : Resignation of director (Section 168)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The letter of resignation of the director is received by the company.	
2	The Board takes note of the resignation and intimates the Registrar in Form DIR-12 within thirty days from the date of receipt of notice of resignation.	
3	The information about the resignation is posted on the website of the company, if any.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist: Retirement of Directors**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	One third of such directors for the time being as are liable to retire by rotation, or if their number is not three or a multiple of three, then, the number nearest to one third, retired from office at first annual general meeting and at every subsequent annual general meeting. (Note: in calculating the total number of directors, independent directors should not be included)	
2	The directors retiring by rotation are those who have been longest in office since their last appointment.	
3	Between directors appointed on the same day, the retirement was, in default of and subject to any agreement among themselves, determined by draw of lots.	
4	The company has filled up such vacancy by appointing the retiring director or some other person.	
5	The director has expressed his willingness for his reappointment.	
6	The provisions of the Act, Articles of Association and other applicable rules have been complied with.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

- Articles of Association
- Register of directors and KMP
- Notice and minutes of Annual General Meeting, Report of AGM
- Board's Report
- DIR-2, DIR-6, DIR-8, DIR-9, DIR-10 (if any), DIR-12

**Checklist: Removal of Director (Section 169)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	A special notice as required under sub-section (2) of section 169 was given to the company to remove a director.	
2	The special notice was signed by member(s) holding not less than one percent of total voting power or holding shares on which an aggregate sum of more than five lakh rupees has been paid up.	
3	The company has sent forthwith a copy thereof to the director concerned and the director was provided opportunity to be heard on the resolution at the meeting.	
4	The representation, if any, made by concerned director was notified to the members on the request of the director along with the notice of the resolution.	
5	If the copy of the representation was not sent because the same was received too late or because of company's default, it was read out at the meeting.	
6	The director who was removed from office was not reappointed as a director by the Board of directors.	

*Checked by:*

*Date:*

*Reviewed by:*

*Date:*

**Indicative list of documents to be checked :**

- Special notice received
- Notice and minutes of Annual General Meeting/EGM, , Report of General Meeting
- Board's Report
- DIR-2, DIR-6, DIR-8, DIR-9, DIR-10 (if any), DIR-12

## Checklist

### XII. LOANS TO DIRECTORS, ETC. AND RELATED PARTY TRANSACTIONS (Section 185 & 188)

Sl. No.	Particulars	Remarks
<i>Loans</i>		
1	<p>The company has not directly or indirectly advanced any loans to its directors or any other person in whom the director is interested or given any guarantee or provided any security in connection with any loan taken by him or such other person. (other than to its wholly owned subsidiary company).</p> <p>Any other person in whom director is interested means- (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director; (b) any firm in which any such director or relative is a partner; (c) any private company of which any such director is a director or member; (d) any body corporate at a general meeting of which not less than twentyfive per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or (e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.</p>	
2	<p>If the loan is advanced to a Managing or Whole Time Director , check whether it is as a part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution.</p>	
<i>Related Party Transactions</i>		
1	<p>Check whether the company has prepared a list of related parties as per section 2(76) of the Act and there exists a system to check whether any contracts / arrangements are being entered into with any of those Parties. Also any department wise mechanism is derived to intimate the same to the secretarial department.</p>	
2	<p>If the company is claiming exemption from the applicability of the section on the grounds that the transactions are in the ordinary course of business and are on arms length basis , check whether the Board has taken an informed decision about the nature of transaction based on criteria given in Rule 15</p>	
3	<p>The company has entered into a contract/ arrangement with any related party through a board resolution at a meeting of the board.</p>	

4	The company has obtained prior approval of the shareholders by a special resolution in case the paid up capital is ten crore or more and wherever the other conditions specified in Rule 15 subsist.	
5	Check that no member of the company who is the related party with whom the transaction is being entered into, has voted on such special resolution.	
6	The company has annexed explanatory statement to the notice of the board or general meeting as may be applicable disclosing the details required under rule 15.	
7	Check whether any director or related party is appointed as an office or place of profit in the company , its subsidiary or associate company and complied with the provisions.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

- Minutes of Board Meetings
- MBP-1, MBP-2, MBP-3 and MBP-4
- Notice and minutes of AGM/EGM
- Balance sheet and Profit & Loss account; Board's Report
- Auditor's Report

**Checklist**

**XIII. LOANS, INVESTMENTS, GUARANTEES AND SECURITIES (SECTION 186)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The board resolution/ special resolution has been passed with respect to loans and investments by the company.	
2	The company has not made investment through more than two layers of investment companies.	
3	The company has not defaulted repayment of deposit while granting loans/ giving guarantee/ providing security.	
4	The company has disclosed in the financial statements the full particulars of the loans given investment made or guarantee given or as prescribed under the Act.	
5	The company maintains register containing the required particulars in form MBP-2 at the registered office of the company.	

6	The company has obtained prior approval of the public financial institution, if term loan is subsisting.	
7	Check that no loan is given at a rate of interest lower than the prevailing yield of 1, 3, 5 or 10 year government security closest to the tenor of the loan.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Indicative list of documents to be checked :**

- Minutes of Board Meetings
- Notice and minutes of AGM/EGM
- MBP-2, MBP-3, DPT-3, DPT-4

**Checklist**

**XIV: REGISTERS, FILING OF FORMS, RETURNS AND DOCUMENTS**

**Register of Renewed or Duplicate Share Certificate {Rule 6, Companies (Share Capital and Debentures), Rules, 2014}**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The renewed share certificate of any share or shares have not been issued unless the certificate in lieu of which it is issued is surrendered to the company.	
2	Where certificates were issued in case of sub-division or consolidated or in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out, or where the pages on the reverse for recording transfers have been duly utilised,, the renewed certificate states on the face of it, that it is "Issued in lieu of share certificate No..... sub-divided/replaced/on consolidation".	
3	Prior/Board consent was obtained before issuance of the duplicate share certificate in lieu of those certificates that are lost or destroyed.	
4	The certificates issued under above stated circumstances state prominently on the face of it that it is "duplicate issued in lieu of share certificate No.....". and the word "duplicate" is stamped or printed prominently on the face of the share certificate.	
5	The entries relating to issuance of renewed/ duplicate certificates are recorded in the Register for Renewed or Duplicate Share Certificate.	
6	In case of unlisted companies, the duplicate share certificates	

	<p>were issued within a period of three months from the date of submission of complete documents to the company.</p> <p>In case of listed companies such certificate are issued within fortyfive days, from the date of submission of complete documents to the company.</p>	
7	The register for renewed or duplicate share certificates is maintained in Form No. SH-2 in accordance with Companies (Share Capital and Debentures) Rules, 2014 and is kept at the registered office of the company or at such other place where the Register of Members is kept.	
8	Entries are incorporated simultaneously in the Register of members maintained under section 88.	
9	All entries made in the Register of Renewed and Duplicate Share Certificates shall be authenticated by the company secretary or such other person as may be authorised by the Board for the purposes of sealing and signing the share certificate.	
10	The register is preserved permanently and kept in the custody of company secretary of the company or any other person authorized by the Board for the purpose.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

#### **Indicative list of documents to be checked**

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

#### **Checklist: Register of sweat equity shares (Section 54) {Rule 8, Companies (Share Capital and Debentures), Rules, 2014}**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The company has maintained a Register of Sweat Equity Shares in Form No. SH.3 in accordance with Companies (Share Capital and Debentures) Rules, 2014.	
2	The Register of Sweat Equity Shares is maintained at the registered office of the company or such other place as the Board may decide.	
3	Whether the entries have been made forthwith.	

4	The entries in the register are authenticated by the Company Secretary of the company or by any other person authorized by the Board for the purpose.	
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Checked by:

Reviewed by:

Date:

Date:

**Checklist: Register of Employee Stock Option (Section 62(1)(b)) {Rule 12, Companies(Share Capital and Debentures), Rules, 2014}**

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

Checked by:

Reviewed by:

Date:

Date:

**Checklist: Register of shares or other securities bought-back (Section 68)**

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

Checked by:

Reviewed by:

Date:

Date:

**Checklist: Register of Deposits [Companies (Acceptance of Deposits) Rules, 2014]**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The company has entered in the register, the entries specified under Rule 14 of these rules.	
2	The company has entered the particulars in the register within seven days from the date of issuance of the receipt, in accordance with the aforesaid rules.	
3	The aforesaid receipt is duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose.	
4	The register is preserved in good order for a period of not less than eight years from the financial year in which the latest entry is made in the register.	

*Checked by:**Reviewed by:**Date:**Date:***Checklist: Register of Charges (Section 85)**

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

*Checked by:**Reviewed by:**Date:**Date:*

**Checklist: Register of Members (Section 88)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The company having share capital has maintained register of members as per Form No. MGT.1 prescribed under Companies (Management and Administration) Rules, 2014.	
2	The Register contains particulars as mentioned in the aforesaid rules.	
3	The company maintains register of debenture holders or any other security holders as per Form No.MGT.2 prescribed under Companies (Management and Administration) Rules, 2014.	
4	Aforesaid Registers are maintained at the Registered office of the Company.	
5	If the aforesaid registers are maintained at some other place in which more than one-tenth of the total members entered in the register of members reside or some other place within the city, town or village where registered office is situated, whether a special resolution has been passed.	
6	An index of members is maintained by the company, when the number of member is equal to or more than fifty.	
7	Every change is incorporated within seven days of such change.	
8	The entries in the aforesaid registers index included therein are authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose, and the date of the board resolution authorising the same is mentioned therein.	
9	The company has made a note of the declaration received in form MGT. 4 in duplicate, w.r.t. beneficial interest in any shares, in the register of members.	
10	The company has filed form No. MGT.6 with the Registrar within a period of thirty days from the date of receipt of aforesaid declaration. In case of Foreign Registers, check whether:	
11	The Articles of the company authorises maintenance of the foreign register.	
12	The company has within thirty days from the date of the opening of any foreign register, filed with the Registrar notice of the situation of the office where such register is kept in Form No.MGT.3 in accordance with the Companies (Management and Administration) Rules, 2014.	
13	Notice of every change is incorporated in the aforesaid register or	

	its discontinuance is filed with registrar within thirty days in Form No. MGT. 3.	
14	The company maintains a duplicate register at its registered office and changes are duly incorporated from time to time.	
15	The entries are authenticated by the company secretary of the company or person authorised by the Board by appending his signature to each entry.	

Checked by:

Reviewed by:

Date:

Date:

**Checklist : Minutes Book of Meetings (Section 118 and Rule 25 of the Companies (Management and Administration) Rules, 2014)**

Sl. No.	Particulars	Remarks
1	Minutes book has been maintained in respect of: <ol style="list-style-type: none"> <li>1. General meetings of the members;</li> <li>2. Meetings of the creditors.</li> <li>3. Meetings of the Board; and</li> <li>4. Meetings of each of the committees of the Board.</li> </ol> Resolutions passed by postal ballot are recorded in the minute book of general meetings.	
2	The pages of the minutes book have been consecutively numbered.	
3	Each page of minutes of proceedings of a meeting of the Board or of a committee thereof is initialled or signed and the last page of the record of proceedings of each meeting is dated and signed by the chairman of the said meeting or the chairman of the next succeeding meeting.	
4	Each page of minutes of proceedings of a general meeting is initialled or signed and the last page of the record of proceedings of each meeting is dated and signed by the chairman of the same meeting within the aforesaid period of thirty days.	
5	Each page of the minute books of general meeting in respect of every resolution passed by postal ballot is initialed or signed and the last page dated and signed by the Chairman of the Board within thirty days or in the event of there being no Chairman of the Board or the death or inability of that Chairman within that period, by a director duly authorized by the Board for the purpose.	
6	The minute books of general meetings, and the minutes books of	

	the Board and committee meetings are maintained in the custody of the company secretary or any director duly authorised by the board.	
7	In case of a company other than a company referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 having its equity shares listed on a recognised stock exchange or a company having not less than one thousand members, whether the company has provided e-voting facilities to its members to exercise their vote at general meetings and if so, whether Rule 20 of the Companies (Management and Administration) Rules, 2014 has been complied with.	

Checked by:

Reviewed by:

Date:

Date:

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

Sl. No.	Particulars	Remarks
1	The necessary particulars as prescribed in the rule 17 are incorporated in the register including details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.	
2	The register is maintained at the registered office of the company.	

Checked by:

Reviewed by:

Date:

Date:

**Checklist : Register of loans guarantee, security and acquisition made by company (Section 186).**

Sl. No.	Particulars	Remarks
1	The company from the date of its incorporation, has maintained a register in Form MBP 2 as per Companies (Meetings of Board and its Powers) Rules, 2014 and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions of securities.	
2	The entries in the register are made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition. The entries in the register (either manual or electronic) are	

	authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.	
3	The register is kept at the registered office of the company.	
4	The register has been preserved since incorporation and is kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist: Register of Investments not held in its own name (Section 187)**

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

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

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

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

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

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

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

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

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

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

<i>Register of Proxies</i>		
2	The register of proxies containing details of proxies lodged in respect of every general meeting is maintained.	
3	All Proxies received by the company are recorded chronologically in a register kept for that purpose, in pursuance with the Secretarial Standards,	
4	In case any Proxy entered in the register is rejected, the reasons there of have been entered in the remarks column.	
<i>Register of Transfers</i>		
5	Register of Transfers containing details of transfer of securities and the procedure of transfer meets the statutory requirements pursuant to section 56 read with rule 11 of Companies(Share Capital and Debentures) Rules,2014.	
6	All transfer of securities held in physical form are in Form.No.SH.4	
<i>Register of Documents Sealed</i>		
7	The company has maintained a register of documents on which common seal is affixed.	
8	The register contains the following: <ul style="list-style-type: none"> <li>• Number and date of the minutes authorising the use of the seal.</li> <li>• Date of sealing.</li> <li>• Persons in whose presence the seal was affixed.</li> <li>• Document sealed.</li> <li>• Location of document.</li> </ul>	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist: Periodical Returns: Annual Return (section 92)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The company has filed annual return within sixty days from the date of holding of the annual general meeting (AGM).	
2	Where no AGM is held in any year, the annual return has been filed within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, if the annual general meeting.	

3	The annual return is prepared in Form No. MGT.7 referred to in Rule 11 of the Companies (Management and Administration) Rules, 2014.	
4	The annual return has been signed by a director and the company secretary.	
5	In case company does not have a company secretary, the annual return has been signed by a director and Company Secretary in practice.	
6	In case of a listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, the annual return has been certified by a Company Secretary in practice and the certificate is in Form No. MGT.8 of aforesaid rules.	
7	The extract of the annual return has been attached to the Board's report in Form MGT. 9 (See Rule 12.1).	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist : Annual Report containing the Financial statements (Section 137)**

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

	reasons for not holding the AGM, have been filed with the Registrar within thirty days of the last date before which the AGM should have been held.	
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*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist : Secretarial Audit Report (section 204)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The Secretarial Audit Report in Form No. MR.3. pursuant to section 204 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 is annexed to the Board's report forming part of the financial statements.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist : Report on Annual General Meeting (section 121)**

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

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist : Other Important Returns**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
<b>Return of Allotment (Section 39)</b>		
1	In case company makes any allotment of its securities, it has, within thirty days thereafter, filed with the Registrar a return of allotment in Form PAS-3 as per Companies (Prospectus and Allotment of Securities) Rules, 2014.	
2	A certified list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the	

	allottees was attached with PAS-3. Certification has been done by the signatory of the Form No. PAS-3.	
3	If the company has allotted securities as fully or partly paid up for consideration other than cash, , whether a copy of the contract, duly stamped, or where the contract is not in writing complete particulars of the contract stamped is attached to the Form PAS-3. In such a case, whether a report of a registered valuer in respect of valuation of the consideration was also attached to PAS-3.	
4	In the case of issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares was attached to the Form PAS-3.	
<b>Return on Buy-Back of Securities (section 68)</b>		
1	The buy back of securities has been in accordance with section 68 read with rule 17 of the Companies (Share Capital and Debentures) Rules, 2014.	
2	The buy-back of securities has been authorized by a special resolution passed in general meeting.	
3	The company has filed the Letter of Offer in Form No.SH-8 in accordance with the Companies (Share Capital and Debentures), Rules, 2014, with the Registrar.	
4	The company has filed the Declaration of Solvency in Form No. SH-9 in accordance with the Companies (Share Capital and Debentures), Rules, 2014 with the Registrar along with the Letter of Offer. In case of Listed company, the Letter of Offer has also to be filed with SEBI.	
5	The Declaration of Solvency is signed by two directors, one of whom shall be Managing Director, where there is one and is verified by an affidavit.	
6	The Letter of Offer is dispatched to the security holders not later than twenty days from its date of filing with the Registrar. For this purpose, the proof of dispatch may be verified.	
7	The company has maintained a Register of Securities bought back in Form No. SH-10 and the entries therein have been authenticated by the Company Secretary or by any other person authorized by the Board.	
8	The company has, after the completion of the buy-back, filed with the Registrar and where it is a listed company, with SEBI, a return on buy-back in Form No. SH-11 as per the Companies(Share Capital and Debentures) Rules, 2014 within 30 days of such completion.	
9	A certificate in Form No. SH.15 signed by two directors of the	

	company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder was attached with the return.	
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*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist : Notice for alteration of share capital (section 64)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	Articles of Association contains the power to alter share capital.	
2	Company has filed a notice with the registrar within a period of thirty days of such alteration along with altered memorandum.	
3	The notice is in Form No. SH.7 of the Companies (Share Capital and Debentures) Rules, 2014.	
4	The effect if alteration is noted in every copy of the Memeorandum and Articles of Association of the company.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist : Return of changes in shareholding position of Promoters and top 10 shareholders{Section 93 read with Rule 13 of the Companies(Management and Administration) Rules, 2014}**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	In the case of a Listed Company, the company has filed Form No. MGT.10 with the Registrar with fee with respect to changes relating to either increase or decrease of two percent, or more in the shareholding position of promoters and top ten shareholders of the company in each case, within fifteen days of such change.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist : Registration of Resolutions and Agreements (section 117)**

**Following resolutions are required to be filed with ROC:**

**a) special resolution**

The following matters require sanction by special resolution

<i>Section no.</i>	<i>Section Name</i>	<i>Particulars</i>
5(4)	Articles	Inclusion of Entrenchment provisions in the articles of association of a public company

12(5)	Registered office of the Company	Change of the registered office outside the local limits of any city, town or village where such office is situated.
13(1) & (8)	Alteration of and memorandum	Alteration of the memorandum of the company to change the objects for which the money has been raised from public through prospectus and still has any unutilized amount out of the money so raised.
14	Alteration of articles	Alteration of any clause of the articles.
27 (1)	Variation in terms of contract or the objects in prospectus	Variation in terms of contract referred to in the prospectus or objects for which prospectus was issued.
41	Global depository receipt	Issuance of depository receipts in any foreign country
48(1)	Variation of shareholders rights	Variation of the rights attached to the shares of any class
54	Issuance of sweat equity shares	Issuance of sweat equity shares of a class of shares already issued
62(l) (b)/ (1)(c)/ (3), proviso	Further issue of share capital	<ul style="list-style-type: none"> <li>— Issue of further shares to employees under a scheme of employees' stock option.</li> <li>— Issue of further shares to any person whether or not those persons include the existing members or employees for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer.</li> <li>— For approving the terms of issue of debentures or loan containing an option to convert such debentures or loans into shares.</li> </ul>
66	Reduction of share capital	Reduction of share capital subject to the confirmation of the Tribunal
67(3)(b)	Restriction on purchase by company or	Approving any scheme for the purchase of, or subscription for, fully paid up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for

	giving of loans by it for purchase of its shares	the benefit of the employees or such shares held by the employee of the company.
68	Power of company to purchase its own securities	Buy back of securities
71	Debentures	Issue of debentures with an option to convert whole or part of the debentures into shares at the time of redemption.
94	Place of keeping and inspection of registers, returns, etc.	To keep registers, returns etc., at any other place than the registered office, where more than one-tenth of the total number of members reside
140	Removal, of auditors	Removal of the auditor before the expiry of his term after obtaining the previous approval of the Central Government
149(1), proviso/ (10)	Company to have Board of directors	<ul style="list-style-type: none"> <li>— Appointment of more than fifteen directors by a company</li> <li>— Re-appointment of an independent director after expiry of a term of five consecutive years.</li> </ul>
165(2)	Number of directorships	Specifying number of companies (10/20) in which director of the company may act as director.
180	Restrictions on powers of Board	Certain powers to be exercised by the Board of directors only with the consent of company.
185	Loan to directors, etc.	Approving a scheme pursuant to which any loan may be given to a managing or whole - time director.
186	Loan and investment by company	Giving of any loan or guarantee or providing any security or the acquisition exceeds the limits of sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.
188	Related party transaction	Entering into contract or arrangement with a related party, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed
196	Appointment of managing	Appointing the person as a managing director, whole-time director or manager who has attained the age of 70 years.

	director, whole time director or manager	
197(4)	Overall maximum managerial remuneration and managerial remuneration in case of inadequacy or absence of profits.	If Articles so provide determining the remuneration payable to the directors of a company, including any managing or whole-time director or manager
210	Investigation into affairs of company	For applying to Central Govt for investigation of the affairs of the company.
212	Investigation into affairs of company by Serious Fraud Investigation Office	For applying to Serious Fraud Investigation Office for investigating the affairs of the company.
248	Power of Registrar to remove name of company from register of companies	Filing an application before the Registrar to remove the name of company from the register of companies.
262	Sanction of scheme	Approving the Scheme of amalgamation of the sick company with any other company by the shareholders of both companies.
271	Circumstances in which company may be wound up by Tribunal	To resolve that the company be wound up by the Tribunal.
304	Circumstances in which company may be wound up voluntarily	To resolve that the company be wound up voluntarily

319(1)	Power of company liquidator to accept shares, etc., as consideration for sale of property of company.	Authorising Company liquidator of the transferor company to accept shares etc., by way of compensation wholly or in part for sale of property, etc., of the company where the transferor company is proposed to be wound up voluntarily
321	Arrangement when binding on company	To sanction any arrangement entered into between the company which is about to be, or is in the course of being wound up and its creditors.
343	Company liquidator to exercise certain powers subject to sanction	To authorise Company Liquidator to exercise certain powers
347	Disposal of books and papers of company	Directing the manner of disposing of company's books and papers when the affairs of a company have been completely wound up and it is about to be dissolved.
371	Effect of registration under this Part	To adopt table F in schedule I, if required

- b) Resolutions which have been agreed by all the members but which, if not so agreed to, would not have been effective unless passed as special resolutions
- c) Board Resolution/agreement relating to appointment, re-appointment or renewal of the appointment, or variation in the terms of appointment of managing director
- d) Resolution passed by class of members
- e) Members' resolutions authorising the board to exercise powers under section 180(1)(a) &(c)
- f) Resolutions for winding up under section 304
- g) Board resolutions for exercising following powers:
  - i. Make call
  - ii. Buy back of securities
  - iii. Issuing securities
  - iv. Borrowing monies
  - v. Investing funds
  - vi. Granting loans/ giving guarantees/providing securities

- vii. Approving financial statement and Board's report
- viii. Diversifying business
- ix. Approving amalgamation/merger/ reconstruction
- x. Taking over of a company/acquiring control in substantial stake in another company (I-X) above as per section 179(3)
- xi. Making political contributions
- xii. Appointing or removing KMP
- xiii. Appointing internal auditor
- xiv. Appointing secretarial auditor

**Serial No. (xi-xiv) above as per Companies (Meetings of Board and its Powers) Rules, 2014**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	A copy of every resolution as above or any agreement, together with the explanatory statement under section 102, if any, is filed with the Registrar within thirty days of the passing or making thereof in Form No. MGT.14 as per Companies (Management and Administration) Rules, 2014, along with the fee.	
2	The copy of every resolution which has the effect of altering the articles and the copy of every agreement has been embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.(Sec 117(1) proviso).	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist : Return of Appointment of Managerial Personnel (section 196)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1	The Board has passed a resolution for the appointment of Managerial Personnel, viz. managing director, whole-time director or manager, subject to approval by members at the next general meeting.	
2	The notice convening the board/general meeting for considering the appointment includes the terms and conditions of such appointment and remuneration payable and other matters, including interest of director(s) in such appointments, if any.	
3	A return of appointment of a Managing Director, Whole Time Director or Manager, Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO) has been filed within sixty days of the appointment, with the Registrar in Form No. MR.1 as per Companies (Appointment and Remuneration of	

	Managerial Personnel) Rules, 2014 along with such fee as may be specified for this purpose.	
	<p>The provisions of Section 203 of the Act relating to the appointment of Key Managerial Personnel and the Rules thereunder have been complied with i.e.</p> <ul style="list-style-type: none"> <li>a) Company was required to have whole time KMP and as such has appointed KMP.</li> <li>b) Chairperson of the company is not the Managing director or CEO of the company.</li> <li>c) Chairperson of the company is the Managing director or CEO of the company, but has been authorised by the articles.</li> <li>d) Chairperson of the company is the Managing director or CEO of the company, since company has multiple business.</li> <li>e) Board Resolution was passed for appointment of company containing terms and conditions of appointment and remuneration.</li> <li>f) None of the KMPs hold such office in more than one company.</li> <li>g) KMPs hold a similar position in another company, which is a subsidiary company.</li> <li>h) None of the KMPs is a director in any other company.</li> <li>i) KMPs are directors in other companies with the permission of the Board.</li> <li>j) KMPs holding such position as on 1st April 2014 in more than one company have chosen to be KMP of only one company within a period of six months.</li> <li>k) A person is appointed as managing director/ manager in two companies with the unanimous approval of the board for which specific notice was given.</li> <li>l) Vacancy created in the position of KMP was filled within six months.</li> </ul>	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**Checklist : Particulars of Appointment of Directors and key managerial personnel (section 170)**

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

*Checked by:*

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**Checklist : Return of Deposits (Chapter V)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
<i>Return of Deposits</i>		
1.	Every company referred to in sub-section(2) of section 73 and every eligible company intending to accept deposits has issued a circular or a circular in the form of advertisement respectively in Form DPT-1 and has complied with the requirements of Rule No. 4 of Companies (Acceptance of Deposits) Rules, 2014.	
2.	Whether the provisions relating to Deposit Insurance have been complied with; (Rule 5)	
3.	Whether the company has created security for repayment of deposit and interest; (Rule 6)	
4.	Whether the company has appointed Trustees for secured deposit in the manner and Deposit Trust Deed has been executed; (Rule 7)	

5.	Whether the company has maintained liquid assets and created a Deposit Repayment Reserve Account; (Rule 13);	
6.	The company has, on or before the 30th day of June, of every year, filed with the Registrar, a return in Form DPT-3. (Rule 16)	
7.	Check whether the Form DPT-3 contains the information therein as on the 31st day of March of that year duly audited by the auditor of the company.	
8.	Whether Register of Deposits has been maintained; (Rule 14)	

Checked by:

Reviewed by:

Date:

Date:

### Checklist : Particulars of Beneficial Interest in Shares (section 89)

Sl. No.	Particulars	Remarks
1.	The company has received the declaration from the member/beneficial owner in the prescribed form MGT-4/MGT-5.	
2.	Such declaration is noted in the register of members.	
3.	The company has filed within 30 days of the receipt of the declaration, a return in Form No.MGT.6 as per Companies (Management and Administration) Rules, 2014 with the Registrar in respect of such declaration with fee.	

Checked by:

Reviewed by:

Date:

Date:

### Checklist: Registration of Creation/Modification/Satisfaction of Charge (Chapter VI)

Sl. No.	Particulars	Remarks
1.	The company has created or modified charge on its property. And the particulars of the charge created or modified are filed with the Registrar within thirty days of its creation or modification in Form No.CHG-1 (for other than Debentures) or Form No.CHG-9 (for debentures including rectification).	
2.	A copy of every instrument evidencing any creation or modification of charge, filed with the Registrar is verified as follows-	

	<p>(a) Where the instrument or deed relates solely to the property situated outside India, the copy is verified by a certificate issued either under the seal of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;</p> <p>(b) Where the instrument or deed relates, whether wholly or partly, to the property situated in India, the copy is verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.</p>	
3.	The company has given intimation to the Registrar of the payment or satisfaction in full of any charge within a period of thirty days from the date of such payment or satisfaction in Form No.CHG-4 along with the fee.	
4.	In case the particulars of creation or modification of charge has not been filed within 300 days of the date of creation or modification with additional fees or the particulars of satisfaction of charge are not filed within 30 days from the date of satisfaction, the delay has been condoned by Central Government. [Rule 12 of the Companies (Registration of Charges) Rules, 2014].	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

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### 3

## CAPITAL MARKET RELATED LAWS/RULES/REGULATIONS

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

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

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

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	Check whether the company has issued securities to the public.		
2.	If yes, whether, an application for listing to the stock exchange has been made by the company along with the documents and particulars mentioned in Rule 19(1) of the Securities Contracts (Regulation) Rules, 1957. (Section 17A)		
3.	Whether the conditions of listing agreement have been complied with, on receipt of approval for listing of securities? (Section 21)		
4.	Whether the application for listing of securities has been refused by the stock exchange. Section 17A(3)		
5.	If the permission is refused, whether the company has repaid all moneys, if any, received from applicants in pursuance of the offer document? [Section 17A (3)]		
6.	In case the stock exchange refused to list the securities, whether the company has made an appeal to the Central Government or the Securities Appellate Tribunal, as the case may be, against such refusal. (Section 22 & 22A)		

7.	What was the outcome of the appeal?		
8.	<p>If listed, the company has complied with Rule 19A of SCRR with respect to continuous listing requirement with the stock exchange.</p> <p><i>Note:</i> To check this, PCS may check the annual report of the company and the shareholding pattern filed by the company with the stock exchange under clause 35 of listing agreement.</p>		
9.	<p>The company has complied with-</p> <p>(i) Rule 19 (1) of SCRR with respect to filing of documents.</p> <p>(ii) 19 (2) (b) of SCRR with respect to minimum public shareholding.</p>		

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## B. DEPOSITORIES ACT, 1996

Depository means an organisation where the securities of a shareholder are held in the form of electronic accounts in the same way as a bank holds money. The Depository holds electronic custody of securities and also arranges for transfer of ownership of securities on the settlement dates.

According to section 2(e) of the Depositories Act, 1996, Depository means a company formed and registered under the Companies Act and which has been granted a certificate of registration under section 12(1A) of the Securities and Exchange Board of India Act, 1992. Chapter II of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 states that no issuer shall make a public issue or rights issue of specified securities unless it has entered into an agreement with a depository for dematerialization of specified securities already issued or proposed to be issued.

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

The section further provides that other companies may convert its securities into dematerialized form or issue securities in physical or dematerialized form.

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

### Checklist for compliances under Depositories Act, 1996

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	Check the Tripartite agreements entered into by the company with the depository for dematerialisation of securities. (NSDL/CDSL)		
2.	Check that the provisions of section 29 of the Companies Act, 2013 and the rules made thereunder have been complied with.		
3.	Check that the company has complied with clause 55A of SEBI (Depositories and Participants) Regulations, 1996 with respect to the reconciliation of share capital audit. <i>Note</i> : PCS may check the certified copy of quarterly audit report submitted to the stock exchange by the company with respect to reconciliation.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

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

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

Checklist for Compliances under SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011

<i>Sl. no.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1	The Company has appointed merchant banker registered with SEBI.		
2	The acquirer has made a public announcement with respect to substantial acquisition of shares or voting rights and acquisition of control in the target company. (Note: The PCS may check from the documents of the target company for ensuring compliance with the same)		
3	The acquirer has published detailed public statement not later than five workings days of the public announcement.  (Note: The PCS may check the copies of newspaper clipping for ensuring the compliance of the same)		
4	The acquirer through its manager to the open offer has sent the public announcement to all the stock exchanges where the shares of the target company are listed.		
5	The copy of the public announcement has also been sent to SEBI and the target company at its registered office within one working day of date of the public announcement.  (Note: The PCS may check the copy of the documents mentioned in point 4 and 5 available by the merchant banker for verifying the same)		
6	The acquirer has after publication of detailed public statement in the newspaper, sent a copy of the same to –  (i) the SEBI;		

	<p>(ii) all the stock exchanges where the shares of the target company are listed;</p> <p>(iii) the target company at its registered office.</p> <p>(Note : The PCS may check the document provided by merchant banker for verifying the same)</p>		
7	In case of upward revision in offer price, or of the offer size, the acquirer has made announcement about the same in all the newspaper as prescriber under these regulations. (Note : The PCS may check the copy of newspaper clipping for verifying the same)		
8	The acquirer has informed about such upward revision to SEBI, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.		
9	The acquirer has disclosed during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company to each of the stock exchange on which the shares of the target company are listed and to the target company at its registered office within twenty- four hours of such acquisition.		
10	The acquirer has issued an advertisement announcing the schedule of activities for the open offer, the status of statutory and other approvals, if any, Unfulfilled conditions , if any, and their status , the procedures for tendering acceptances and such other material detail as may be specified, in all the newspapers as prescribed in these regulations.		
11	The acquirer has sent such advertisement to- <ul style="list-style-type: none"> <li>(i) SEBI;</li> <li>(ii) all the stock exchanges on which the shares of the target company are listed; and</li> <li>(iii) the target company at its registered office.</li> </ul>		
12	The acquirer has issued a post offer advertisement within five working days after the offer period giving details including aggregate		

	number of shares tendered, accepted, date of payment of consideration.		
13	The acquirer has sent such post offer advertisement to- (i) SEBI; (ii) all the stock exchanges on which the shares of the target company are listed; and (iii) the target company at its registered office.		
14	After payment of consideration to the shareholders, the acquirer has transferred the unclaimed balances, if any, lying at the credit of the special escrow account, to the Investor Protection and Education Fund established under the SEBI (Investor Protection and Education Fund) Regulations, 2009, at the end of seven years from the date of deposit thereof.		
15	In case of withdrawal of open offer, the acquirer has made an announcement within two working days in the same newspaper in which public announcement to the open offer was published providing the grounds and reasons for withdrawal of open offer.		
16	The acquirer has informed in writing with such announcement to- (i) SEBI; (ii) all the stock exchanges on which the shares of the target company are listed; and (iii) the target company at its registered office.		
17	In the event it was required to alienate any material assets of the target company or any of its subsidiaries, where the acquirer has not expresses its intention to alienate in the detailed public statement and the letter of offer, where it has been debarred from causing such alienation in a period of two years after the offer period such alienation has been passed by special resolution by way of postal ballot by the shareholders of the target company.  (Note: The PCS may check Form No. MGT-14 for verifying the special resolution passed for such alienation)		

18	The recommendation on open offer made by the committee of independent directors of the target company, has been published in the same newspaper where the public announcement of the open offer was published atleast two working days before the commencement of the tendering period.		
19	The copy of such recommendations published, has been sent to :- (i) SEBI; (ii) all the stock exchanges on which the shares of the target company are listed; and (iii) the target company at its registered office.		
20	The manager to open offer has submitted the due diligence certificate to SEBI. (Note: PCS may check the copy of the due diligence certificate)		
21	The manager to open offer has been filed with SEBI a report confirming status of completion of various open offer requirement.  (Note: PCS may check the copy of the report submitted to SEBI)		
22	In case of event based disclosures as prescribed under regulation 29(1) and (2), such disclosures have been made to the target company at its registered office and to all the stock exchanges where the shares of the target company are listed within the two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company.		
23	The continual disclosures as specified in regulation 30(1) and (2), have been made within seven working days from the end of each financial year to every stock exchanges where the shares of the target company are listed and to the target company at its registered office.		
24	The disclosure regarding shares encumbered by promoter or by persons acting in concert with him and also any invocation of such encumbrance or release of such encumbrance shares, have been made to all the stock		

	<p>exchanges where the shares of the target company are listed and to the target company at its registered office within seven working days from the creation or invocation or release of encumbrance, as the case may be.</p> <p>(Note: The pcs may check the copy of the formats submitted to stock exchange and target company for verifying point 22, 23 &amp; 24)</p>		
25	The PCS may check the copy of the following formats prescribed for various disclosures / Reports for ensuring compliance of SEBI (SAST) Regulations 2011.		

(It may be noted that PCS may request the merchant banker to the open offer to provide all the document for the purpose of verification. while conducting secretarial audit)

## **D. SEBI (Prohibition of Insider Trading) Regulations**

### **Provisions of Companies Act 2013 on prohibition of insider trading.**

Section 195. (1) states that no person including any director or key managerial personnel of a company shall enter into insider trading: However, nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

#### **Who is an insider?**

Explanation.—For the purposes of this section,—

(a) “insider trading” means—

- (i) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or
- (ii) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

(b) “price-sensitive information” means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

Further section 195 (2) states that if any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

### **Powers delegated to SEBI under Companies Act 2013**

Section 458.(1) states that the Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification:

The powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to Securities and Exchange Board for listed companies or the companies which intend to get their securities listed and in such case, any officer authorised by the Securities and Exchange Board shall have the power to file a complaint in the court of competent jurisdiction.

### **SEBI (Prohibition of Insider Trading) Regulations**

The Securities and Exchange Board of India (SEBI) formulated the SEBI (Insider Trading) Regulations, 1992 under the powers conferred on it under the SEBI Act, 1992. The PIT Regulations, 1992 had their challenges in their drafting, interpretation and reach. Besides, the

felt need to ensure a clear regulatory policy that is not only easily comprehensible but is also comprehensive led to this Committee being set up under the chairmanship of Justice N. K. Sodhi, Former Chief Justice of the High Courts of Kerala and Karnataka and a Former Presiding Officer of the Securities Appellate Tribunal.

SEBI has issued and notified the SEBI (Prohibition of Insider Trading) Regulations, 2015 (Regulations) on 15th January, 2015 based on recommendations of sodhi committee. These Regulations are effective from 120th day of the date of notification i.e. on and from 15th May, 2015

Accordingly, the Secretarial Auditor has to check compliances under SEBI (Prohibition of Insider Trading) Regulations, 1992 till May 14, 2015 and with effect from May 15, 2015 the compliances are to be checked as per SEBI (Prohibition of Insider Trading) Regulation, 2015.

Every listed company has to comply with the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT) Regulations/SEBI(Prohibition of Insider Trading) 2015 as the case may be read with Section 195 of the Companies Act, 2013.

### **I. Checklist for compliances under SEBI (PIT) Regulations, 1992**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	Any action has been initiated by SEBI against the company or any of its director, officer or employee under PIT regulations.		
2.	The company or any of its director, officer or employee has been convicted by SEBI with respect to Insider Trading. (Note: Please mention the action taken by SEBI in the audit report as qualification)		
3.	The company has formulated a Code of Conduct for Insider Trading as provided in the SEBI Regulations. (Note: Please check the copy of the code of conduct)		
4.	The company has appointed a compliance officer.		
5.	The company maintains a record (list) of designated officers and their dependents.		
6.	The record is maintained manually or in electronic form.		
7.	The company has constituted a committee to oversee and implement the Code of Conduct, the name of the committee and its terms of reference.		
8.	The company is regular in receiving initial and continual disclosures from the designated persons, directors, officers, promoter or person forming part of		

	promoter group with respect to the total number of shares or voting rights held and change in shareholding or voting rights of shares held by such persons.		
9.	The company is regular in disclosing the information received from its officer, director, promoter or person forming part of promoter group to the stock exchange in the format prescribed by SEBI.		
10.	The compliance officer maintains the record of the said disclosures as required to be made by the aforesaid persons.		
11.	The mode of maintaining the records of the said disclosures, whether physical or electronic mode.		
12.	The company has framed the Code of corporate disclosures practices. (Note: Check the copy of code of corporate disclosures practices as specified in Schedule II)		
13.	The compliance officer has framed procedures for pre-intimation of closure of trading window and opening of trading window on periodic rests.		
14.	The procedure of pre-clearance of trade is followed in the company. (Note: Check the method used for such pre-clearance of trade followed by the company)		
15.	Any director/ officer/ designated employee have entered into opposite transaction during the next six months following the prior transaction relating to buy/sell of company securities.		
16.	The company follows the Chinese Wall policy provided under these regulations.		
17.	There has been any waiver of holding period, if so, how many times and to whom?		
18.	The following statements have been forwarded to the compliance officer by the directors/designated employees/partners including the dependent family members (as defined by the company/organisation/firm) at the time of joining the organisation and  I. periodic statement of any transactions in securities;  II. the annual statement of all holding in securities.		

19.	The compliance officer makes presentation before the Managing Director/Chief Executive Officer or the Committee on a monthly basis of all the details of the dealing in the securities by employees/director/officer of the company and the accompanying documents that such persons had executed under the pre-dealing procedure as envisaged in this code.		
20.	<p>An undertaking by designated employee director/officer has been executed in favour of the company incorporating, inter alia, the following clauses, as may be applicable :</p> <ul style="list-style-type: none"> <li>i. that the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.</li> <li>ii. that in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction, he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.</li> <li>iii. that he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.</li> <li>iv. that he/she has made a full and true disclosure in the matter.</li> </ul>		
21.	Any action taken against any employee upon non-adherence to the said code of conduct.		
22.	Any other prevention mode with respect to Insider Trading as adopted by the Company.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

## II. SEBI (Prohibition of Insider Trading) Regulations, 2015

### Checklist for Compliances under SEBI (PIT) Regulations, 2015 (effective from May 15, 2015)

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	Any action has been initiated by SEBI against the company or any of its promoter, director, Key Managerial Personnel, officer or employee under the PIT regulations in the past or present.		
2.	The company or any of its promoter, director, Key Managerial Personnel, officer or employee has been convicted by SEBI with respect to Insider Trading in the past or present.  (Note: Please mention the action taken by SEBI in the audit report as qualification)		
3.	The company has appointed a compliance officer.		
4.	The Board of Directors of every listed company has formulated a code of practices and procedures for fair disclosure of unpublished price sensitive information as per Schedule A to these regulations.  Note : The PCS may check true copy of the code.		
5.	The Company has appointed a Chief Investor Relation Officer, who is also a senior officer of the company to deal with dissemination of information and disclosure of unpublished price sensitive information, as per the principles set out in Schedule A of these regulations		
6.	The Company has formulated code of conduct to regulate, monitor and report trading by insiders as per Schedule B of these regulations.		
7.	The Company has formulated an internal code of conduct for governing dealing in securities as per the minimum standards set out in Schedule B.		
8.	The Company has published the code of fair disclosure on its website.		
9.	Every such code of practices and procedure relating to unpublished price sensitive information and every document thereto has been promptly intimated to the stock exchange where the securities are listed.		

10.	Every other person who is required to handle Price Sensitive Information in the course of business operation has formulated a code of conduct as per the minimum standards set out in Schedule B to these regulations.		
11.	The Compliance Officer has administered the code of conduct and other compliance requirement under these regulations.		
12.	The Compliance officer has reviewed and monitored the trading plans submitted by the insider and approved the trading plan that it has not violated these regulations.		
13.	The Compliance officer has received undertaking or declaration from insider with respect to the trading plan, as the case may be.		
14.	The Compliance officer has notified the trading plan to the stock exchange(s).		
15.	The Company maintains the record of the said disclosures as required for a minimum period of five years.		
16.	The Company is regular in receiving the initial disclosure from every promoter, Key Managerial Personnel (KMP) and Directors with respect to the securities held by them in Company.		
17.	The Company has received initial disclosure within 30 days from the effective date of these regulations i.e. May 15, 2015.		
18.	The Company receives disclosure by every person on appointment as KMP or Director or upon becoming a promoter within seven days of such appointment or becoming promoter.		
19.	The Company is regular in receiving continual disclosure from the promoter(s), employees and directors with respect to the number of securities acquired or disposed of within two trading days of such transaction.		
20.	The Company has notified the particulars of such trading to the stock exchange(s) within two trading days of receipt of the disclosure or from becoming aware of such information.		
21.	The Company is regular in receiving disclosures of holding & trading of securities of the company by any		

	other connected person or class of connected persons, held or traded by them. The Company has in its discretion require this information & set out the frequency for seeking such information.		
22.	The Compliance officer has provided reports of trading to the Chairman of Audit Committee, if any or to the Chairman of the Board of Directors as per the frequency stipulated by the Board of Directors.		
23.	The Company follows Chinese wall procedures & processes as per the norms contained in the code of conduct.		
24.	The Compliance officer determines the timing of trading window and re-opening of the trading window.		
25.	The Compliance officer has put in place appropriate procedure for pre-clearance of trade.		
26.	The Designated Person have not entered into any contra trade as per the specified period as mentioned in the code of conduct which shall be not less than six months from the date of trade in securities of the Company.		
27.	The profit arises from the Contra trade, if executed inadvertently or otherwise, has been liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by the SEBI under the Act.		
28.	Any action taken against persons responsible for non adherence with respect to formulation of code of conduct.		
29.	Any other prevention mode with respect to insider trading as adopted by the Company.		

*Checked by :*

*Reviewed by:*

*Date:*

*Date:*

## E. SEBI (ICDR) Regulations, 2009

### Checklist

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
<b>GENERAL COMPLIANCES</b>			
1.	<p>Details of issue may be checked in the offer document filed with SEBI and simultaneous filing of prospectus/ red- herring prospectus or shelf prospectus.</p> <p>[Note: The PCS may check the copy of the statement by the lead Merchant Banker certifying that all changes, suggestions and observations made by SEBI have been incorporated and a copy of due diligence certificate in Form A of schedule I of SEBI (ICDR) Regulations, 2009 ensuring compliance with the provisions of the regulation]</p>		
2.	Where warrants have been issued along with public issue or rights issue, the tenure of such warrants has not exceeded a period of twelve months from the date of allotment in public/ rights issue.		
3.	The utilization of proceeds for General Corporate Purposes have not exceeded twenty five percent of the amount generated by the issuer.		
4.	<p>All application moneys received has been refunded to the applicants in case of non-receipt of minimum subscription i.e. ninety percent of the offer within:</p> <ul style="list-style-type: none"> <li>i. fifteen days of the closure of the issue, in case of a non-underwritten issue; and</li> <li>ii. seventy days of the closure of the issue, in the case of an underwritten issue where minimum subscription including devolvement obligations paid by the underwriters is not received within sixty days of the closure of the issue.</li> </ul> <p>(Note: The PCS may check the refund orders / certificate of posting for the compliance of the provision)</p>		
5.	<p>Towards the utilization of proceeds, where the issue size exceeds five hundred crore rupees, a monitoring agency has been appointed to monitor the proceeds.</p> <p>(Note: The PCS may check the copy of report of the monitoring agency in schedule IX, which has to be filed</p>		

	on a half yearly basis with SEBI, till the proceeds of the issue are fully utilised.)		
6.	(Note: the PCS may check the documents from the merchant banker w.r.t. its compliance)		
7.	The specified securities are to be allotted and/or application moneys to be refunded within fifteen days from the date of closure of the issue and where securities are not allotted/ application moneys refunded interest undertaken in the offer document has to be paid, in case of delayed payments and the payment has to be done by NEFT / RTGS.  (Note: The PCS may check the refund orders / certificate of posting to ensure compliance of the same.)		
8.	The pre-issue advertisement is required to be made after registering the red herring prospectus (in case of book built issue) or prospectus (in case of fixed price issue) with Registrar of companies in specified newspapers in format specified in Part A of schedule XIII.  (Note: The PCS may check the copies of the newspaper clippings for compliance of the same.)		
9.	The issuer is required to make an announcement of the floor price or price band alongwith financial ratios computed for both the upper and lower end of the price band at least 5 working days before the opening bid( in case of IPO) and at least one working day before the opening of the bid(in case of FPO) in all newspapers in which pre-issue advertisement was made. The announcement shall also be sent to the stock exchanges where the securities are proposed to be listed for disclosure on their website.  (Note: The PCS may check the copies of the newspaper clippings for compliance of the same.)		
10.	Receipt of minimum promoters' contribution and allotment of their securities are in accordance the requirements.  (Note: the PCS may verify from the copy of the resolution passed by the board of directors of the issuer for allotting specified securities to promoters towards amount received against promoters' contribution, before opening of the issue; and a certificate from a		

	Chartered Accountant, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, which shall also contain the names and addresses of the promoters who have contributed to the promoters' contribution and the amount paid by each of them towards such contribution)		
11.	An issuer making a public issue of specified securities providing for green shoe option for stabilising the post listing price of its specified securities, may do so only after shareholder approval.  (Note: The PCS may check copy of resolution passed in the general meeting of shareholders and the agreement in between the issuer and the stabilizing agent.)		
12.	A report on activities under green shoe option stabilizing agent are required to be reported to SEBI on daily basis and during the stabilisation period and a final report to the Board in the format specified in Schedule XII.  (Note: the PCS may verify the copies of such report for compliance.)		
13.	Whether the application money received has been utilized in accordance with the section 40 of Companies Act, 2013.		
14.	Whether the disclosures made in the red herring prospectus while making an initial public offer are updated on an annual basis by the issuer and shall be made publicly accessible.		
15.	Check whether the outstanding subscription money is called within twelve months from the date of allotment in the issue and where the applicant has failed to pay the call money within the twelve months, such shares has been forfeited.		
16.	Whether the issuer has altered the terms (including the terms of issue) of specified securities which and the same may adversely affect the interests of the holders of that specified securities, if so, the consent in writing of the holders of not less than three-fourths of the specified securities of that class or with the sanction of a special resolution passed at a meeting of the holders of the specified securities of that class has been obtained. This is only for holders of Convertible portion of the		

	PCDs. Hence applicable only if an issue of such an instrument has been made.  (Note: The true copy of the resolution may be checked for compliance of the same.)		
17.	The issuer is required to appoint a compliance officer for monitoring the compliance of securities laws and for redressal of investor grievances.		
18.	The lead merchant banker is required to submit post issue reports to SEBI.		
19.	The lead merchant banker is required to submit a due diligence certificate as per the format specified in Form G of Schedule Vi, along with the final post issue report.  (Note: the PCs may check the copy of the due diligence certificate submitted and reports filed by the lead merchant banker with the SEBI.)		
20.	The post issue advertisement is issued within ten days from the date of completion of the various activities in specified newspapers containing all the details as specified.)  (Note: The PCS may check the copies of newspaper clippings for compliance of the same.)		
<b>Additional requirements for Issue of Convertible Debt instruments</b>			
21.	The issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.  (Note: The PCS may check the e-form MGT. 14 filed with ROC for the details of the issue)		
22.	The issuer has created Debenture Redemption Reserve in accordance with section 71 of Companies Act, 2013		
23.	In case of secured debentures, the issuer has created charge on the security.  (Note: The PCS may check the e-form CHG.9 for verifying the same.)		
24.	Where the value of non-convertible portion of partly convertible debt instruments exceeds fifty lakhs the same may be rolled over only when 75% of holders of convertible debentures have approved the rollover through a resolution by postal ballot		

	(Note: The PCS may check MGT. 14 for the compliance of the same.)		
<b>RIGHTS ISSUE</b>			
25.	Certified true copy of the resolution passed by the Board of Directors for issue of securities under proposed rights issue/ approving the proposed rights issue.		
26.	To check if the stock exchange has been informed 2 working day prior to the Board Meeting which proposes to consider a rights issue.		
27.	<p>Certified true copy of the resolution passed by the Shareholders, if any;</p> <ul style="list-style-type: none"> <li>• increase in the authorised share capital required)(special resolution).</li> <li>• for issue of securities under proposed rights issue</li> </ul> <p>(Note: The PCS may check the copy of Form No. SH 7, MGT14 filed with ROC)</p>		
28.	<p>A pre-issue advertisement for the rights issue has to be made in accordance with the details specified in the regulation, at least three days before the opening of the issue in newspapers as specified.</p> <p>(Note: The PCS may check the copies of the newspaper clippings for the compliance of the same.)</p> <p>(Note: The PCS may check the E-form MGT.14 filed with ROC for verification.)</p>		
29.	<p>In case the company has issued convertible debt instruments, it is to be ensured whether the issuer company has made reservation of equity shares of the same class in favour of the holders of such instruments proportion to the convertible part thereof, before opening a rights issue of equity shares. Check whether the equity shares so reserved were issued at the time of conversion of convertible debt instruments on the same terms at which equity shares offered in rights issues were offered.</p> <p>(Note: The true copy of the resolution may be checked for compliance of the same and also the returns filed on allotment of the same to the debenture holders.)</p>		
30.	To check if 7 working days notice was given for Record		

	Date. To also check if all the directors at a duly convened meeting had approved the Letter of Offer.		
31.	Check whether the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed.		
32.	To check whether the promoters have complied with the SEBI (SAST) Regulations, in case of taking in additional shares.		
33.	To check whether necessary disclosures have been made by the promoters under the SEBI (SAST) and SEBI (PIT) Regulations, with Stock Exchanges where the shares are listed/SEBI post the rights issue.		
<b>BONUS ISSUE</b>			
34.	Whether the issuer company is authorised by its articles of association for issue of bonus shares; if not a special resolution has been passed.  (Note: The PCS may check that certified true copy of the Resolution passed in the EGM/AGM and Form MGT 14 has been filed with the Registrar.		
35.	In case the issuer company is authorised by its articles check the certified true copy of the Resolution passed by the Board of Directors in which the company has proposed to issue Bonus Shares to the shareholders of the company.		
36.	A certificate from the Managing director/ Company Secretary ..... that the proposed bonus shares would be ranking pari-passu in all respects including dividend with the existing equity shares of the company should be checked.  ( Note: This certificate is required as per BSE norms. The certificate requirement is not prescribed under SEBI (ICDR) Regulations, 2009 but there is a clause that the The shares issued in the issue shall be pari passu with the existing shares in all respects including dividends.)		
37.	To confirm that all the existing securities of the company were fully paid-up and listed on the Exchange at the time of the bonus issue.		

38.	A certified true copy of the acknowledgement of FCGPR form has been submitted by the company to Reserve Bank of India in respect of allotment of bonus shares to foreign entities/shareholders.		
39.	<ul style="list-style-type: none"> <li>• Check whether an issuer, announcing a bonus issue after the approval of its board of directors and not requiring shareholders' approval was implemented within fifteen days from the date of approval of the issue by its board of directors</li> <li>• Check whether the bonus issue was implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.</li> </ul>		
40.	In case of unlisted company the issuer company shall comply with section 63 of the Companies Act, 2013 which has been discussed earlier.		
<b>PREFERENTIAL ISSUE</b>			
41.	The listed issuer may make a preferential issue only when special resolution has been passed by the shareholders of the company.  (Note: The PCS may check copy of e-form MGT 14 filed with the ROC.)		
42.	Check whether the additional disclosures as specified in the regulations were also made in the explanatory statement of the notice for the general meeting proposed for passing special resolution		
43.	To prepared a private placement offer letter in Form No. PAS 4 in accordance with the Companies Act, 2013 and the same has been addressed to the proposed investors / allottees.		
44.	To maintain a register of all the persons, to whom the preferential offer is going to be made in accordance with Form No. PAS 5 of the Companies Act, 2013.		
45.	Check whether the Allotment pursuant to the special resolution in case of preferential issue has been completed within a period of fifteen days from the date of passing of such resolution or the receipt of approval from the stock exchange, whichever is later.		

46.	<p>Where allotment is :</p> <p>I) for consideration other than cash check the following documents</p> <ul style="list-style-type: none"> <li>• Certified copy of valuation report</li> <li>• Certified copy of Shareholders Agreements.</li> <li>• Certified copy of approval letters from FIPB and RBI if applicable.</li> </ul> <p>II) pursuant to CDR Scheme/ Order of High Court/ BIFR check the following document</p> <ul style="list-style-type: none"> <li>• Certified copy of relevant scheme/ order</li> </ul> <p>III) pursuant to conversion of loan of financial institutions check the following document:</p> <ul style="list-style-type: none"> <li>• Certified copy of the Loan Agreement executed by the company.</li> </ul> <p>Check if the consideration is paid in cash, it was received from the respective allottee's bank account.</p>		
47.	<p>To check if the allottees have made necessary disclosures under Regulation 29(1)/29(2) of the SEBI (SAST) Regulations, 2011 and Regulation 13(3)/(4)/(4A) of the SEBI (PIT) Regulations, 1992 and Regulation 7 of the SEBI (PIT) Regulations, 2015 within the stipulated time to the stock exchanges.</p> <p>(Note: SEBI (PIT) Regulations, 2015 will be effective from May 15, 2015.)</p>		
48.	<p>The Issuer company has complied with Clause 35 of the equity Listing Agreement w.r.t pledging of shares.</p>		
49.	<p>To check if the number of allottees pursuant to one resolution does not exceed 50 and that the total number of allottees in preferential allotments in a financial year do not exceed 200.</p>		
50.	<p>Check the copy of the confirmation submitted by the Managing Director/ Company Secretary of the issuer company w.r.t. compliance with the regulations.</p>		
<b>QUALIFIED INSTITUTIONAL PLACEMENT</b>			
51.	<p>Check the copy of special resolution approving the qualified institutional placement passed by its shareholders and Form MGT 14 filed with ROC. To</p>		

	check if the resolution specifically mentions that the allotment is Qualified Institutional Placement.		
52.	Check that the minimum number of allottees for each placement of eligible securities made under qualified institutional placement is not less than: <ul style="list-style-type: none"> <li>• two, where the issue size is less than or equal to two hundred and fifty crore rupees;</li> <li>• five, where the issue size is greater than two hundred and fifty crore rupees:</li> </ul>		
53.	Check the copy of special resolution for allotment with respect to completion of allotment within a period of twelve months from the date of passing of the resolution.		
54.	Check whether the issuer company has complied with clause 35 of Listing Agreement w.r.t shareholding pattern.		
55.	To check if the Information Memorandum has been privately circulated duly numbered to the prospective investors		
56.	To check if return of allotment has been filed within the stipulated time with the ROC.		

### **INDIAN DEPOSITORY RECEIPTS**

Under section 2(48) of the Companies Act, 2013 “Indian Depository Receipt” means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts.

Section 390 read with rule 13 of Companies (Registration of Foreign Companies) Rules, 2014 provides that 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 shall make an issue of Indian Depository Receipts (IDRs) unless such company complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India.

57.	The issuer is required to appoint the Compliance officer for the compliances.		
58.	Check whether the company is compliant with the eligibility criteria as mentioned in these regulations and the aforesaid rules.		
59.	Check whether the issuing company obtained prior		

	written approval from the Securities and Exchange Board of India on an application made in this behalf for issue of IDRs along with the issue size.		
60.	<p>Check whether the company has received the minimum subscription as per the regulations; if not the issuer company refunded money within:</p> <p>In case of non-underwritten issues: within fifteen days from the date of the closure of the issue</p> <p>In case of underwritten issues: Within sixty days from the date of closure of the issue.</p>		
61.	<p>The pre issue advertisement has been made in specified newspapers at least three days before the opening of the issue, containing the details as specified in the regulations.</p> <p>(The PCS may check the copies of newspaper clippings for the compliance of same.)</p>		
62.	<p>The merchant banker is required to submit post-issue reports to the Board. The post-issue reports shall be submitted as follows: (a) initial post issue report on the lines of Parts A and B of Schedule XVI of SEBI (ICDR) Regulations, 2009, within three days of closure of the issue; (b) final post issue report on the lines of Parts C and D of Schedule XVI of SEBI (ICDR) Regulations, 2009, within fifteen days of the date of finalisation of basis of allotment or within fifteen days of refund of money in case of failure of issue. (The PCS may check the copies of such reports)</p>		
63.	<p>A limited two way fungibility for IDRs is permitted. Check the compliance with RBI circulars (Department of Foreign Exchange) with regard to fungibility of IDR's</p>		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

## **F. Issue of Securities through employee stock option**

### **Compliance by an Unlisted Company**

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

### **Compliance listed Company**

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

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

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

### **Applicability of these regulations**

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

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

### **Types of schemes covered under these regulations**

The provisions of these regulations shall apply to following, -

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

### **Treatment of Preferential allotment to employees**

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

- The provisions pertaining to preferential allotment as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 shall not be applicable in case of a company issuing new shares in pursuance and compliance of these regulations.

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

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

#### **For listed companies**

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

10.	whether the off market transfers by the trust has been made only under circumstances specified in these regulations		
11.	whether the trust sells shares in the secondary market only under the circumstances specified under these regulations		
12.	whether the company has constituted compensation committee for administration of the scheme		
13.	whether the employee is eligible to participate in the scheme		
14.	whether the scheme is approved by the shareholders through special resolution		
15.	Check whether the explanatory statement to the special resolution complies with Rule 12 of the Companies (share Capital and Debentures) Rules 2014		
16.	Check whether other procedural aspects as prescribed under Rule 12 of Companies (share Capital and Debentures) Rules 2014		
17.	whether the specified disclosures as prescribed under Rule 12 of Companies (share Capital and Debentures) Rules 2014 has been made in the Board's Report		
18.	whether the company has complied with prescribed norms for varying the terms of the schemes		
19.	whether unlisted companies going for IPO, complies with the provisions prescribed with regard to Pre-IPO scheme		
20.	whether the board of directors place auditor's certificate, certifying compliance under these regulations, before the shareholders in annual general meeting		

Compliance with respect to specific schemes

#### **Employee Stock Option Scheme**

1. Whether the minimum vesting period is one year
2. Whether the disclosures specified have been made to prospective option grantees
3. Whether employee does not receive dividend or vote till the exercise of option

#### **Employee Stock Purchase Scheme**

1. Whether shares issued under ESPS is locked in for a minimum period of one year from the date of allotment
2. Whether ESPS forming part of public issue are issued at the same price as in the public issue?

- Whether ESPS scheme contains the details of the manner in which the scheme will be implemented and operated

#### **Stock Appreciation Rights Scheme(SARS)**

- Whether SARS contains the details of the manner of implementation
- Whether specified disclosures has been made to the prospective SAR grantees

#### **General Employee Benefits Scheme(GEBS)**

- Whether GEBS contains the details of the manner of implementation
- Whether, the shares of the company or shares of its listed holding company does not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS, at any point of time.

#### **RETIREMENT BENEFIT SCHEME (RBS)**

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

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	whether the shares of the company or shares of its listed holding company does not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of RBS at any point of time.		
2.	The company has obtained In Principle approval from the stock exchange.		
3.	Form No. PAS. 3 as per Companies (Prospectus and Allotment of Securities) Rules, 2014, Form No. SH.7 as per Companies (Share Capital and Debentures) Rules, 2014 and Form No. MGT.14 as per Companies (Management and Administration) Rules, 2014, as applicable, has been filed with ROC.		
4.	Check if listing approval by stock exchange(s) was granted for shares arising after IPO out of options granted under a scheme prior to the IPO, upon exercise subject to compliance with SEBI (ICDR) Regulations, 2009.		
5.	Check the copy of the in principle approval granted by the stock exchange under clause 24 (a) of the listing agreement.		
6.	Check compliance with Relevant clauses of listing agreement.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

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

These regulations are applicable to:

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

“Debt securities” means non-convertible debt securities which create or acknowledge indebtedness, and include debentures, bonds and such other securities of a body corporate or any statutory body constituted by virtue of a legislation, whether constituting a charge on the assets of the body corporate or not, but excludes bonds issued by Government or such other bodies as may be specified by SEBI, security receipts and securitized debt instruments. For issue of convertible debt securities, SEBI (ICDR) Regulations, 2009 are applicable.

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

*For Non Convertible Debt securities*

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	There is no restraining, prohibiting, or debarring order against the company or any of its promoter by SEBI or any other regulatory authority.  (Note: PCS may mention the details of the order, if any, in the audit report as a qualification).		
2.	The company has appointed one or more merchant bankers in case of a public issue and a debenture trustee registered with SEBI.		
3.	The company has obtained credit rating from atleast one rating agency registered with SEBI.  [Note: The PCS may check the copy of the credit rating certificate for verifying the same]		
4.	The company has obtained in-principle approval from the stock exchange to list its non-convertible debt securities.		
5.	The company has entered into a tripartite agreement with the RTA and the depositories.  [Note: The PCS may check the agreement for verifying the same.]		
6.	The Debenture Trust Deed has been executed in Form No. SH.12 as per Companies (Share Capital and Debentures) Rules, 2014, by the company in favour of the debenture trustees within sixty days of allotment of debentures.		

7.	Debenture Redemption Reserve has been created as provided in sub-rule (7) of Rule 18 of Companies (Share Capital and Debentures) Rules, 2014.		
8.	The final offer document has been filled with the Registrar of Companies, SEBI and designated stock exchange.		
9.	In case company has opted to file a Shelf Prospectus or a Shelf Information Memorandum the updated documents for any further fund raising under the Shelf Document is filed with ROC / Designated Stock exchange.		
10.	The information memorandum has contained the disclosures as specified in Companies Act, 1956 or Companies Act, 2013, whichever is applicable and rules made thereunder and has also included disclosures regarding summary term sheet, material updations including revisions in ratings, if any along with the rating rationale and financial ratios specified in Schedule I of SEBI (Issue and Listing of Debt Securities) indicating the pre and post issue change.		
11.	In case the 75% of minimum subscription of the base issue size has not been received by the company, the entire money has been refunded within 12 days from the date of the closure of the issue.  (Note: The PCS may check from the statement of escrow account which is opened for the purpose of debt issue)		
12.	In case there has been a delay in the aforesaid refund, the company has returned the subscription amount along with interest at the rate of 15% per annum for the delayed period.		
13.	The company has retained the over subscription money up to the maximum of 100% of Base issue size or any lower limit as specified in the offer document.		
14.	If the company has filed shelf prospectus, then it has retained over subscription up to the rated size, as specified in their shelf prospectus.		
15.	The company has created a charge or security, if any, in respect of secured debt securities has been disclosed in the offer document along with its implication e- form CHG-9 has been filed with the ROC regarding creation of charge on the debt securities.		

16.	In case of rollover of debt securities, it has been approved by the holder of the debt securities by a passing a special resolution and e- form MGT - 14 has been filed with ROC for such purpose.		
17.	In case the holders of the debt securities has not given their positive consent to the roll over, the company has redeemed the debt securities of all the debt securities holders.		
18.	The Company has obtained final listing and trading approval from the stock exchanges where it proposes to list its securities.		
19.	The company has passed resolution by the Board of Directors for allotment of securities specifically making a mention of total number of securities allotted / allocated by it.		
20.	Allotment is completed within 12 days of the closure of the issue and Form No. PAS 3 regarding allotment of debentures as per Companies (Prospectus and Allotment of Securities) Rules, 2014 is filed with the ROC within 30 days of allotment.		
21.	Letter from Registrars and lead manager confirming dispatch of share / debenture/ warrant certificates, allotment advice, refund orders, underwriting commission, uploading of electronic credit of Securities, uploading of ECS/NEFT/RTGS credits and brokerage warrants.		
22.	Certificate from the Registrar reconciling the total securities allotted with the total securities credited with the depositories, and securities that have failed to be credited.		
23.	[Note: The PCS may check the copy of the basis of allotment.]		

Checked by:

Reviewed by:

Date:

Date:

*NOTE : As Per The Proposed Listing Regulations, Any Fund Raising Activity Would Require Prior Intimation Of Board Meeting And Agm/Egm Approving The Issue To The Stock Exchange And The Uploading Of The Information On The Company Website Immediately After Conclusion Of The Board Meeting*

## IB. Compliance of Debt Listing Agreement for Public issue and Listing of Non Convertible Debt Securities

The company has to comply with PART A of the debt listing agreement in case the equity shares of the company are listed on the stock exchange.

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The company has obtained a half- yearly certificate regarding maintenance of 100% asset cover in respect of listed debt securities by either a Practicing Company Secretary or a Practicing Chartered Accountant, along with the half yearly financial results which has also been submitted to the debenture trustee. [ clause 2(d)]		
2.	The company has disclosed on half- yearly basis and in their annual financial statements the extent and nature of security created and maintained, in respect of its listed debt securities. [clause 5 ]		
3.	The company has sent to the stock exchange for dissemination, along with the half yearly financial results, a half yearly communication, counter signed by trustees, containing inter- alia the following information (a) credit rating ; (b) asset cover available; (c) debt - equity ratio; (d) previous due date for the payment of interest / principal and whether the same has been paid or not; and (e) next due date for the payment of interest/ principal. [clause 6]		
4.	In case of expected default in timely payment of interest or redemption or repayment amount or both in respect of the debt securities , the same has been notified to the stock exchange.		
5.	In case allotment of debt securities has not been made or refund orders has not been dispatched to the investor within 30 days of the closure of the public issue, the company has paid interest @ 15% per annum.		
6.	In case the equity shares of the company has delisted, the company has complied with Part B of the debt listing agreement.  [Note : The PCS may check the half yearly compliance report given by the compliance officer, submitted to the Board for verifying the above.]		

## **IIA. Checklist for issuance of Non Convertible Debentures on private placement basis under SEBI (Issue and listing of debt securities ) Regulations, 2008**

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

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

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

	regulations and the same has been disclosed on the website of the Stock Exchange where such securities are proposed to be listed.		
10.	The relevant documents has been submitted the to the trustee for security creation.		
11.	<p>A press release has been issued for disclosing the information to the investors and the general public in case of any of the following events by the Debenture Trustee:</p> <ul style="list-style-type: none"> <li>a. default by issuers to pay interest on debt securities or redemption amount;</li> <li>b. failure to create a change on the assets ;</li> <li>c. revision of rating assigned to the debt securities;</li> </ul> <p>(Note : The PCS may check the copy of the press release)</p>		
12.	The information as required under point 10 above, has also been placed on the websites, of the debenture trustee, the company and the stock exchanges.		
13.	The company, the debenture trustee and stock exchange has disseminated all the information and reports on debt securities including compliance reports filed by the issuers and the debenture trustee regarding the debt securities to the investor and the general public by placing them on their websites.		
14.	<p>The company has filed the following e- forms with the Registrar of Companies:</p> <ul style="list-style-type: none"> <li>i. MGT-14 with respect to the Board resolution passe for issuance of NCDs on private placement basis.</li> <li>ii. PAS -3 for allotment of debentures</li> <li>iii. PAS – 4 with respect to private placement offer letter</li> <li>iv. PAS-5 with respect to complete record of placement offer.</li> </ul> <p>(It may be noted that as PAS- 5 format is not notified by MCA, instead GNL-2 will be filed)</p>		

	v. CAG-9 with respect to creation & charge on security, if any.		
15.	The company has complied with part B of the debt listing agreement.  (Note : The PCS may check the copy of information memorandum filed with the stock exchange for complete verification of each particular information and default, if any, made by the company.		

**IIB. Compliance under Debt listing agreement for Listing of NCDs issued on private placement basis:**

For NCDs issued on private placement basis the issuer has to comply with the part – B of Debt listing agreement, where the equity shares of the issuer are not listed on the stock exchange.

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The company has transferred to 'Investor Education & Protection Fund set up as per section 205C of the companies Act, 1956 the unclaimed interest, if any which remains unclaimed and unpaid for a period of 7 years from the date they become due for payment.  (Note : Section 125 of the companies Act,2013 corresponding to section 205C of the Companies Act, 1956 is not yet notified by MCA.) [ CLAUSE 12]		
2.	The company has obtained a half yearly certificate regarding maintenance of 100% security covers in respect of listed debt securities by either a Practicing Company Secretary or a Practicing Chartered Accountant, along with the half yearly financial results. [clause 13(d)]		
3.	In case the company has not allotted the securities within 30 days of the closure of the public issue it has paid interest @ 15% per annum to the investors. [clause 18(b)]		
4.	The company has maintained 100% asset cover sufficient to discharge the principal amount at all times for the debt securities issued and has disclosed to the exchange on half yearly basis and in their annual financial statements, the extent and nature of security created and maintained. [clause 16(a)]		
5.	The company has appointed a company secretary or any other person as Compliance Officer. clause 22]		

6.	The company has furnished to the stock exchange on a half yearly basis, a statement indicating material deviations, if any, in the use of proceeds [clause 19A(9)].		
7.	The information mentioned in point 6 has been furnished to the Stock Exchange alongwith the half yearly financial results furnished under clause 29 of debt listing agreement to the stock exchange and the same has also been published in the newspaper simultaneously with the half yearly financial result [clause 19A(b)].		
8.	<p>The company has sent to its holders of debt securities and also to the Stock Exchange for dissemination:</p> <p>A. Notice of all meetings of the debt securities holder specifically stating that the provisions for appointment of proxy as mentioned in Section 105 of the Companies Act,2013 is applicable.</p> <p>B. A half- yearly communication counter signed by debenture trustee, along with the half yearly financial results, containing <i>inter alia</i>, following information:</p> <ul style="list-style-type: none"> <li>i. credit rating;</li> <li>ii. asset cover available;</li> <li>iii. debt – equity ratio;</li> <li>iv. previous due date for the payment of interest/ principal and whether the same has been paid or not; and</li> <li>v. next due date for the payment of interest / principal. [ clause 27]</li> </ul>		
9.	The company has made annual disclosure in the annual report as prescribed under clause 28.		
10.	<p>The company complied with the requirement with respect to half yearly financial results as prescribed under clause 29.</p> <p>[Note: The PCS may request to compliance officer to provide him / her the Half yearly compliance report with respect to the debt listing compliance submitted to the Board of Directors and stock exchange for verifying the requirements as mentioned above.</p>		

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

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

- maintain records of all the shares dematerialized, rematerialized and details of all securities declared to be eligible for dematerialization in the depositories and ensure that dematerialization of shares shall be confirmed/created only after an in-principle approval of the stock exchange/s where the shares are listed and the admission of the said share with the depositories have been granted.
- have proper systems and procedures in place to verify that the securities tendered for dematerialization have not been dematerialized earlier.
- ascertain, reconcile daily and confirm to the depositories that the total number of shares held in NSDL, CDSL and in the physical form tallies with the admitted, issued and listed capital of the issuer company; and
- confirm that the dematerialization requests have been processed within 21 days and shall also state the reasons for shares pending confirmation for more than 21 days from the date of request.

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

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The company has appointed an RTA in accordance with SEBI regulations. <i>Note</i> : The PCS may check the agreement or MOU entered into by the company with the RTA.		
2.	The RTA has obtained a certificate from a practicing company secretary that all transfers have been completed within the stipulated time in terms of clause 47 (c) of the listing agreement.		

*Checked by:*

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*Date:*

*Date:*

## I. SEBI (Delisting of Equity Shares) Regulations, 2009

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

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

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

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

Sl. No.	Particulars	Compliance	Remarks
<b>I.</b>	<b>Compulsory delisting</b>		
1.	<p>i. Check the reasons for which action has been taken by the recognized stock exchange for compulsory delisting.</p> <p>ii. In case there is compulsory delisting, the company/ whole time directors/ its promoters/ companies which are promoted by any of them has not accessed the securities market directly or indirectly or sought listing for any equity shares for a period of 10 years from the date of such delisting.</p>		
<b>II</b>	<b>Voluntary delisting - where no exit opportunity is required</b>		
2.	Submission of the resolution approving the delisting scheme as passed by the Board of Directors of the Company, in compliance with Regulation 7(1) (a) to stock exchange.		
3.	The company has given public notice of proposed delisting in atleast one English national daily and one Hindi national daily with wide circulation and one regional newspaper of the region where the concerned		

	recognised stock exchange is located. (Note : The PCS may check the copies of newspaper clippings)		
4.	The public notice contains: <ul style="list-style-type: none"> <li>i. the name of the recognized stock exchanges from which the equity shares of the company are intended to be delisted.</li> <li>ii. the reasons for such delisting.</li> <li>iii. the fact of continuation of listing of equity shares on recognized stock exchanges having nationwide trading terminals.</li> </ul>		
5.	An application has been made to the concerned recognized stock exchange for delisting of its equity shares.		
6.	The application has been disposed of within a period not exceeding 30 days from the date of receipt of completed application.		
7.	The company has disclosed the fact of delisting in the first annual report of the company prepared after such delisting.		
<b>III.</b>	<b>Voluntary delisting - where exit opportunity is given</b>		
8.	The application for delisting of equity shares was made to the concerned stock exchange.		
9.	Certified copy of the resolution passed by the Board of Directors approving the delisting scheme is in compliance with Regulation 8 (1) (a), and has been submitted to stock exchange.		
10.	The company has intimated the Stock exchange regarding the outcome of the Board Meeting as required under clause 36 (7) (iv) of Listing Agreement.		
11.	Prior approval of members has been obtained by postal ballot for the delisting process with atleast two third majority.		
12.	The company has filed Form No. MGT. 14 as per Companies (Management and Administration) Rules, 2014, required for registration of special resolution with RoC.		
13.	Submission of application to stock exchange for in-principle approval for delisting of equity shares along with the copy of the audit report as required under regulation 55A of SEBI (Depositories and Participants) Regulations, 2009.		

14.	The in-principle approval for delisting has been received from the stock exchange.		
15.	A public announcement has been made in one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region regarding the delisting proposal.		
16.	The company has disclosed all the material information in the public announcement including the information specified in Schedule I of the Regulations. (Note: Refer Schedule I)		
17.	The public announcement is signed and dated by the promoter. Where the promoter is a company, the public announcement has been dated and signed on behalf of the Board of directors of the company by its manager or secretary, if any, and by not less than two directors of the company, one of whom shall be a managing director where there is one.		
18.	The public announcement has been published by the company after the closure of the offer.		
19.	Before making the public announcement the provisions related to escrow account contained in regulation 11 have been complied with.		
20.	The public announcement was made within eight working days of the closure of the offer regarding: <ul style="list-style-type: none"> <li>(i) Success of the offer under regulation 17.</li> <li>(ii) Failure of the offer under regulation 19.</li> <li>(iii) Rejection under regulation 16 of the final price discovered under Schedule II by the promoters.</li> </ul>		
21.	Regulation 20 regarding payment of consideration on success of the offer and return of equity shares have been complied with.		
22.	The final application has been made to the concerned stock exchange(s) for delisting of equity shares.		
23.	Check the order of the recognized stock exchange granted to the company for delisting.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

## J. SEBI (Buyback of Securities) Regulations, 1998

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

Buy- back of securities by a listed company

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

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

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

### Buy— back of Securities by a private and unlisted public company

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

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

#### Buyback of Securities by a listed company

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The method used for buy-back of securities is in compliance with regulation 4.		
2.	The buy-back of securities is authorized by the articles of association and if not, they were amended and special resolution passed for the amendment is filed with the stock exchange and RoC.		
3.	Company has filed Form No.MGT.14 as per Companies (Management and Administration) Rules, 2014 with the Roc in respect of the special resolution.		
4.	In case of buy-back where the first proviso of Section		

	68 (2) (b) of Companies Act, 2013 is applicable, board resolution has been passed approving the buy-back and the resolution has been filed with the stock exchange and SEBI.		
5.	The company has filed a letter of offer in Form No. SH.8 as per Companies (Share Capital and Debentures) Rules, 2014 with fee with RoC before the buy-back of securities. Further, such letter of offer has been dated and signed on behalf of the Board of Directors of the company, by not less than two directors, one of whom shall be the managing director, where there is one.		
6.	The explanatory statement has been annexed to the notice of the general meeting pursuant to section 102 of the Companies Act, 2013 and contains the disclosures as specified in Part A of Schedule II of these regulations. <i>(Note: Refer Part A of Schedule II)</i>		
7.	The public announcement contains all the material disclosures required under Schedule II of these regulations. Further, the announcement has been made in at least one english national daily, one hindi national daily and a regional language daily all with wide circulation at the place where the registered office of the company is situated within 7 days of passing of special resolution.		
8.	In case of buy-back through stock exchanges, the public announcement contains details of the brokers and stock exchanges through which the buy-back of shares or other specified securities would be made.		
9.	In case of buy-back through book building process, the public announcement contains the detailed methodology of the book-building process, the manner of acceptance, the format of acceptance to be sent by the security-holders pursuant to the public announcement and the details of bidding centres.		
10.	The soft copy of public announcement has been filed with SEBI through the merchant banker.		
11.	Buy-back has been made on a stock exchange having nation-wide trading terminals.		
12.	In case of buy-back through book building process, the book-building process has been made through an electronically linked transparent facility.		
13.	The company has filed with SEBI the declaration of		

	solvency under these regulations pursuant to Section 68 (6) of the Companies Act, 2013 and with RoC in Form No. SH.9 as per Companies (Share Capital and Debentures) Rules, 2014.		
14.	The declaration of solvency is signed and verified by atleast two directors, one of whom is the managing director of the company, if any.		
15.	The company maintains a record or register of security certificates which have been cancelled and destroyed in Form No. SH10 as per Companies (Share Capital and Debentures) Rules, 2014.		
16.	The company has opened an escrow account and special account as required under these Regulations.		
17.	The certificate that the securities bought back have been extinguished within seven days of the last date of completion of buy-back is duly certified and verified by- <ul style="list-style-type: none"> <li>i. the registrar and where there is no registrar, by the merchant banker;</li> <li>ii. two directors of the company one of whom shall be a managing director where there is one;</li> <li>iii. the statutory auditor of the company.</li> </ul>		
18.	The certificate of extinguishment has been filed with SEBI and the stock exchange on a monthly basis by the seventh day of the month succeeding the month in which the securities certificates are extinguished and destroyed.		
19.	The company has filed with SEBI, a return containing such particulars relating to buy-back of securities within 30 days of completion of buy-back and with the RoC in Form No. SH.11 as per Companies (Share Capital and Debentures) Rules, 2014.		
20.	Return filed with RoC in Form No. SH.11 include certificate of compliance in Form No. SH.15 signed by two directors of the company including the managing director, if any, certifying that buy-back of securities has been made in compliance with the provisions of the Act and the rules made there under.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

## K. Listing Agreement

Stock exchanges are platforms for dissemination of information by companies. In addition to its primary function of providing liquidity for securities, it facilitates purchase/sale of securities. Before permitting the securities for listing, it requires companies to enter into listing agreement for ensuring compliances including intimations/publications which are generally:

- i. Time based compliances such as filing of shareholding pattern every quarter, publication of quarterly/annual financial statements, quarterly Corporate Governance Report, etc.
- ii. Event based compliances such as intimations regarding corporate actions, proposed change in the general character or nature of its business, corporate restructuring of the company resulting in a change exceeding +/- 2% of the total paid-up capital, etc.

### Checklist on major Compliances under Listing Agreement

<i>Sl. No.</i>	<i>Clause</i>	<i>Particulars</i>	<i>Complied</i>	<i>Remarks</i>
1.	5A	The company has followed the prescribed procedure, with respect to shares issued (physical and demat) pursuant to the public issues or any other issue, which remain unclaimed and are lying in the escrow account.		
2.	13	The company has promptly notified the Stock Exchange, of any attachment or prohibitory orders restraining the Company from transferring securities.		
3.	14	The company maintains transfer registers as required by the stock exchange.		
4.	16	The company had closed its transfer books at least once a year at the time of Annual General Meeting, after giving Stock Exchange notice in advance of at least seven working days ;  The company closed its transfer books for corporate actions, after giving advance notice to stock exchanges, of 7 working days before such corporate actions;  The time gap between two book closures and record dates was atleast 30 days.		
5.	19(a)	The company has notified the stock exchange at least 2 working days in advance of the date of the meeting of its Board of Directors at which the recommendation or declaration of a dividend or convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of the dividend or the issue of right is due to be considered. The company has declared all dividend and/or cash bonuses at least five days before commencement of the closure of its transfer books or the record date fixed for the purpose.		

	19(d)	The Company has given prior notice of at least 2 working days to the stock exchanges about the board meeting at which the proposal for buy back of securities is to be considered		
	19(e)	In case of a FPO made through fixed price route the company has notified the stock exchange at least 48 hours in advance, of the proposed meeting of its Board of Directors convened for determination of issue size.		
6.	20	The company has intimated the stock exchanges, within 15 minutes of closure of the Board meeting by phone, fax, e-mail, where all dividends and/or cash bonuses were recommended or declared or the decision to pass any dividend or interest payment, decision of buy-back is taken and other business considered by the Board		
7.	22	The company has intimated the stock exchanges within 15 minutes of closure of the Board meeting that considered and decided on increase of capital, re-issue of forfeited shares and other businesses specified in the clause by phone, fax, or e-mail.		
8.	24	The company has obtained in principle approval for listing of its securities ;  The Company has filed with the stock exchange, for approval, any scheme/petition proposed to be filed before any Court or Tribunal under the Companies Act, at least a month before it is presented to the Court or Tribunal.		
9.	25	If any option to purchase any shares was granted, the company notified the number of shares covered by such options, the terms and the time available for exercising the options and all subsequent changes or cancellation or exercise of such options.		
10.	27	The company has notified promptly to the stock exchange, of any action leading to redemption, cancellation or retirement in whole or in part of any securities of the intention to draw the securities, the date and period of closing books for such drawing and the amount of securities outstanding after such drawing.		
11.	28	The company has given 21 days prior notice to stock exchange, before making any change in the nature of shares listed or in the benefits to their holders.		
12.	28A	The company has not issued shares which give any persons superior voting rights or dividend on equity shares that are already listed.		

13.	29	The company has promptly notified to the stock exchange any proposed change in the general nature of business.		
14.	30	The company has notified promptly of any change — of the Board by death, resignation, removal or otherwise; — of the Managing Director; — of Auditors.		
15.	31	The Company has promptly forwarded the following to the stock exchange immediately after despatch to the shareholders.  a) Six copies of the statutory and Directors' Annual reports along with form A or form B (Please refer the format as prescribed under this clause) as applicable, Balance sheet and profit & Loss Account.  b) Six Copies of all notices, resolutions and circulars relating to new issue of capital prior to their dispatch to the shareholders.  c) three copies of all notices, call letters or any other circulars including notices of meeting convened u/s 391 or section 394.  d) copy of the proceedings at all Annual and Extraordinary General Meeting.  e) three copies of all notices, circulars etc. Issued or advertise, either by the company or by any other company, which the company proposes to absorb or amalgamation etc.		
	31A	The company has restated its books of accounts on directions issued by SEBI or by any statutory authority as per the provisions of the extant regulatory framework.		
16.	32	The company has supplied the documents required under the clause including cash flow statement, annual accounts etc.		
17.	35	The Company has filed the shareholding pattern containing details of promoters holding and non-promoters holding in the prescribed format separately for each class of equity shares/security one day prior to listing of its securities on the stock exchanges on quarterly basis, within 21 days from the end of each		

		quarter; within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital.		
18.	35A	The Company has submitted to the stock exchange, within 48 hours of conclusion of the General Meeting, details regarding the voting results in the prescribed format.		
19.	35B	The Company has provided e-voting facility to its shareholders, in respect of all shareholders' resolutions, to be passed at general meetings or through postal ballot and such e-voting has been kept open for such period as specified under the Companies (Management and Administration) Rules, 2014 for shareholders to suit their assent or dissent.		
20.	36	The Company has intimated the stock exchange about strike, lock out, disturbance in business operations, change in general characteristic of business and all events which have a bearing in the performance/operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently.		
21.	38	The Company has paid listing fee and annual listing fee and additional annual listing fee, for listing of securities of further issues.  The company has paid annual custodial fee to the depositories as specified by SEBI.		
22.	40A	The Company has complied with the requirements, of minimum level of public shareholding as specified in Rule 19(2) (b) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.		
23.	40B	The company has complied with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, in case there is a takeover offer made or there is a change in management control.		
24.	41	The company has complied with the conditions relating to preparation, submission and publication of financial results. (Quarterly/Annual)		
25.	43	The company has furnished a quarterly statement indicating the variations between projected utilisation of funds and / or projected profitability statement made by		

		it in any offer document or in any explanatory statement and the actual utilisation of funds and/ or actual profitability.		
26.	43A	The Company furnished to the stock exchange on a quarterly basis, a statement indicating material deviations, if any, in the use of proceeds of a public or rights issue from the objects stated in the offer document along with the interim or annual financial results submitted under clause 41 and has published in the newspaper simultaneously with the interim or annual financial results, after placing it before the Audit Committee in terms of clause 49.		
27.	47	The company has: (a) appointed the Company Secretary as the compliance officer; (b) undertaken a due diligence of the adequacy of the facilities with the RTA; (c) obtained a half yearly certificate from the Practising Company Secretary with respect to delivery of share certificates.		
28.	49	The company has complied with all the requirements as prescribed in clause 49.		
29.	50	The Company has complied with all the Accounting Standard issued by ICAI from time to time.		
30.	52	The Company has filed in the Corporate filing and Dissemination System (CFDS). The information and reports as specified by the participating stock exchange through its compliance officer.  (This clause is applicable to Top 200 Companies as per market capitalization.)		
31.	54	The company maintains a functional website containing basic information about the company.		
32.	55	The company has submitted business responsibility report describing the initiatives taken by the company from an environmental, social and governance perspective, in the prescribed format suggested by SEBI.  (This Clause is applicable to Top 100 Companies Listed on NSE and BSE as per Market capitalisation.)		

*Checked by:*

*Reviewed by:*

*Date:*

*Date*

### Matters Compulsorily to be Placed on the Website of the Company

<i>Clause</i>	<i>Requirements As Per Listing Agreement</i>	<i>Status of the website</i>	<i>Reasons for Non Updation</i>	<i>Remarks</i>
41	Quarterly unaudited /audited financial Results of the company			
41	Annual audited financial Results of the company			
47 (f)	Email ID of the grievance redresser division/ compliance officer exclusively for the purpose of registering complaints by investors.			
49 (II) (B) (4) (b)	The terms and conditions of appointment of independent director shall be disclosed on the website of the Company.			
49 (II) (B) (7) (b)	The details of familiarization programmes for Independent directors shall be disclosed on the company's website and a web link thereto shall also be given in the Annual Report.			
49 (II) (E) (1) & 49 (VIII) (D) (3)	The code of conduct for the Board and Senior Management shall be posted on the website of the company			
49 (II) (F) (3)	The Whistle Blower Policy shall be disclosed by the company on its website			
49 (V) (D)	The company shall formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed on the Company's website and a web link thereto shall be provided in the Annual Report			
49 (VIII) (A) (2)	The company shall disclose the policy on dealing with Related Party Transactions on its website and a web link thereto shall be provided in the Annual Report.			

49 (VIII) (C) (3)	The company shall publish its 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.			
49 (VIII) (E) (3)	Quarterly results and presentations made by the company to analysts shall be put on company's web-site, or shall be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.			
49	Corporate Governance Report			
53	Disseminate through immediately upon entering into agreements with media companies and/or their associates, the following information:-  (a) Disclosures regarding the shareholding (if any) of such media companies/associates in the issuer company.  (b) Any other disclosures related to such agreements, viz., details of nominee of the media companies on the Board of the issuer company, any management control or potential conflict of interest arising out of such agreements, etc.  (c) Disclosures regarding any other back to back treaties / contracts/agreements/MoUs or similar instruments entered into by the issuer company with media companies and / or their associates for the purpose of advertising, publicity, etc.			
54	To display on its website :  <ul style="list-style-type: none"> <li>• details of its business,</li> <li>• financial information,</li> <li>• shareholding pattern,</li> <li>• compliance with corporate governance,</li> </ul>			

	<ul style="list-style-type: none"><li>• contact information of the designated officials of the company who are responsible for assisting and handling investor grievances,</li><li>• details of agreements entered into with the media companies and/or their associates, etc.</li></ul>			
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# 4

## FOREIGN DIRECT INVESTMENT

The Reserve Bank of India (RBI) has issued Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations 2000 (the Regulations) which inter alia provides for the issue or acquisition of shares / convertible debentures and preference shares, manner of receipt of funds, pricing guidelines and reporting of the investments to the Reserve Bank.

Foreign Direct Investment (FDI) in India is undertaken in accordance with the FDI Policy which is formulated and announced by the Government of India. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India issues a "Consolidated FDI Policy Circular" on a yearly basis on March 31 of each year elaborating the policy and the process in respect of FDI in India, that incorporates the amendments made to the regulations. Reserve Bank of India also compiles all the circulars issued, through a master circular on foreign investment in India (master circular) which is issued on July 01st of every year. The latest circular issued on July 01, 2014 which has been updated upto February 09, 2015. The circular is available at [www.rbi.org.in](http://www.rbi.org.in).

Under the Foreign Direct Investments (FDI) Scheme, investments can be made in shares, mandatorily and fully convertible debentures and mandatorily and fully convertible preference shares<sup>1</sup> of an Indian company by non-residents through two routes.

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

*Government Approval Route* : Under the Government Route, the foreign investor or the Indian company should obtain prior approval of the Government of India (Foreign Investment Promotion Board (FIPB), Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be) for the investment.

### **Prohibited activities/ sector as provided under FDI Policy**

1. Lottery business including Government/ private lottery, online lotteries, etc.
2. Gambling and betting including casinos, etc.
3. Chit funds
4. Nidhi company
5. Trading in TDRs
6. Real estate business or construction of farm houses

It is clarified that "real estate business" means dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships

7. Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes

8. Activities/ sectors not open to private sector investment, e.g., Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems). Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

### **Type of instruments to be issued to person resident outside India**

Indian companies can issue equity shares, fully and mandatorily convertible debentures and fully and mandatorily convertible preference shares and warrants subject to the pricing guidelines/ valuation norms and reporting requirements amongst other requirements as prescribed under FEMA Regulations.

- (i) As far as debentures are concerned, only those which are fully and mandatorily convertible into equity, within a specified time, would be reckoned as part of equity under the FDI Policy.
- (ii) Prior to December 30, 2013, issue of other types of preference shares such as non-convertible, optionally convertible or partially convertible, were to be in accordance with the guidelines applicable for External Commercial Borrowings (ECBs). On and from December 30, 2013 it has been decided that optionality clauses may henceforth be allowed in equity shares and compulsorily and mandatorily convertible preference shares/debentures to be issued to a person resident outside India under the Foreign Direct Investment (FDI) Scheme. The optionality clause will oblige the buy-back of securities from the investor at the price prevailing/value determined at the time of exercise of the optionality so as to enable the investor to exit without any assured return.
- (iii) Further, w.e.f. February 03, 2015, all future investments by eligible investors within the limit for investment in corporate bonds shall be required to be made in corporate bonds with a minimum residual maturity of three years. Further, all future investments against the limits vacated when the current investment runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years. FPIs shall not be allowed to make any further investment in liquid and money market mutual fund schemes. FPIs shall not be allowed to make any further investment in CPs.
- (iv) Further, w.e.f. February 05, 2015, eligible investors shall be permitted to invest in government securities, the coupons received on their existing investments in government securities. These investments shall be kept outside the applicable limit (currently USD 30 billion) for investments by FPIs in government securities

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

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

The design of the reporting platform enables the customer to login into the e-Biz portal, download the reporting forms (ARF and FCGPR), complete and then upload the same onto the portal using their digitally signed certificates. The Authorised Dealer Banks (ADs) will be required to download the completed forms, verify the contents from the available documents, if necessary by

calling for additional information from the customer and then upload the same for RBI to process and allot the Unique Identification Number (UIN).

The ARF and FCGPR services of RBI, is being operational on the e-Biz platform from February 19, 2015.

### Steps involved

Step 1: Visit eBiz site

Step 2: Register as a New Member

Step 3: Register Organization

Step 4: Download Form

Step 5: Fill the e-form

Step 6: Upload and Submit Form

Step 7: Make payment

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

It may be noted that for the present, the online reporting on the e-Biz platform is an additional facility to the Indian companies to undertake their ARF and FCGPR reporting and the manual system of reporting as prescribed would continue till further notice.

The ADs will be required to access the e-Biz portal (which is hosted on the National Informatics Centre (NIC) servers) using a Virtual Private Network (VPN) Account obtained from NIC. The financial aspects for obtaining/using the VPN accounts is being finalised by RBI in consultation with Government of India, DIPP and NIC. The same will be informed in due course. AD Category-I banks may bring the contents of this circular to the notice of their customers / constituents concerned. They are advised to extend due cooperation/assistance to their constituents for uploading the abovementioned forms on the e-Biz platform.

### Checklist on Foreign Direct Investment under Automatic Route

<i>Sl. No.</i>	<i>Particulars</i>	
1.	Check the eligibility of the person investing in FDI.	
2.	Check whether the total FDI is within the sectoral cap and not under prohibited sectors.	
3	Check whether the company has complied with pricing guidelines for FDI while issuing fresh shares to persons resident outside India.	
4	Check whether consideration received for FDI is as per the permitted modes of payment.	
5	Check whether any rights/bonus issue has not resulted in FDI exceeding sectoral cap.	
6	Check whether the Company has Section I point no 8.d	

	issued shares under ESOP scheme to persons resident outside India. If so check whether the face value of shares under ESOP scheme does not exceed 5% of the paid up capital of the company. Check whether the shares are allotted to citizens of Bangladesh/Pakistan.	
7	Check whether the Company has converted ECBs into equity shares ? If so whether the conditions stipulated are fulfilled.	
8	Check whether the Company issued equity shares against import of capital goods/machinery, equipment etc. If so whether conditions stipulated in this regard is complied.	
9	Check whether the company has complied with issue of shares if any against pre-operative/pre-incorporation expenses.	
10	Check whether the company has issued shares under ADR / GDR. If so whether conditions stipulated are fulfilled.	
11	Check whether the FDI does not exceed sectoral cap as a result of issue of shares under the scheme of merger.	
12	Check whether the guidelines is followed while calculating total foreign investment	
13	Check whether there is any change in FDI due to transfer of shares from Resident to non resident or non resident to resident.	
14	Check whether the company has informed about the inflow of funds within 30 days from the date of receipt.	
15	Check whether the equity instruments are issued within 180 days of receipt of funds.	
16	Check whether the company issuing shares under automatic route has reported the issue of shares(including shares issued under ESOP) in form FC-GPR within 30 days from the date of issue of shares. Also check whether a certificate from PCS is attached for compliance.	
17	Check whether the reporting for FDI for transfer of shares is made in Form FC-TRS. Check if other Guidelines regarding transfer of shares, namely, valuation guidelines, sectoral caps are being complied with. Check if form FCTRS has been filed with Authorized Dealer Bank within 60 days of remittance.	
18	Check whether the reporting of conversion of ECB into equity in form ECB-2 along with FC-GPR.	

19	Check whether the company has reported the issue of ADR/GDR in prescribed form.	
20	Check if the Company has received Unique Identification Number for each inward remittance received.	
21	Check if the Company has received Foreign Direct Investment (FDI) Registration Number against form FCGPR filed.	
22	Check if the Company has received Certificate from Authorized Dealer Bank for transfer of shares on Form FCTRS. Check if the Company has recorded transfer in its Books after receipt of Certificate from Authorized Dealer Bank.	
23	Check if Annual Return on Foreign Liabilities & Assets is filed every year on or before 15 <sup>th</sup> July. The return is to be filed even if in a particular year, there is no fresh inflow or outflow of funds.	

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#### **Checklist for Foreign Direct Investment under Approval Route**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Reference to Master circular dated July of 2014</i>
1	Check whether prior approval of Foreign Investment Promotion Board is obtained for FDI which are in excess of sectoral cap.	
2	Check whether the shares issued to person who is a citizen of Bangladesh or an entity incorporated in Bangladesh/ Pakistan under the FDI Scheme is with the prior approval of the FIPB. And is subject to the prohibitions applicable.	
3	Check whether the conversion of import payables / pre incorporation expenses / share swap is treated as consideration for issue of shares with the approval of FIPB.	
4	Check whether the FDI in a non SME has exceeded 24% of paid up capital or sectoral cap whichever is lower, if such non SME has industrial licence for products reserved for SMEs? If so prior approval of FIPB is obtained?	
5	Check whether there is any transfer of shares from resident to non resident which requires FIPB approval.	

6	Check whether the Issue of shares to a non-resident against shares swap i.e., in lieu for the consideration which has been paid for shares acquired in the overseas company, can be done with the approval of FIPB.	
7	Check whether the company has complied with reporting requirements for issue of shares under approval route. (Reporting requirements same as automatic route.)  Also check other points from Automatic Route checklist which may be applicable, i.e., Filing of Annual Return on Foreign Liabilities & Assets etc.	

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

<i>Sl. no.</i>	<i>Particulars</i>	<i>Reference to Master Circular dated July of 2014</i>
1	Checklist in case of Foreign Company having Place of business in India (Branch Office/ Liaison Office/ Project Office) Check if the Company has obtained the approval of the Reserve Bank of India in form FNC-1.	
2	Check if the Office is established within a period of six months from date of approval or such other period as may be mentioned in the Approval Letter from RBI and intimation of such establishment is given to RBI	
3	Check if Report has been filed with DGP within 7 days of establishment of the office.	
4	Check if Annual Activity Certificate has been filed every year with DGIT & RBI. Also check if report to DGP is part of such Annual Activity Certificate.	
5	Check if Company is carrying any activity which would be deemed to be having a Place of Business in India as per provisions of Companies Act, 2013 and if compliance under both CA, 2013 & FEMA has been done.	

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## 5

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

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

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

Accordingly Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 vide Notification No. FEMA.120/RB-2004 dated July 7, 2004 was notified which seeks to regulate acquisition and transfer of a foreign security by a person resident in India i.e. investment by Indian entities in overseas joint ventures and wholly owned subsidiaries as also investment by a person resident in India in shares and securities issued outside India.

### Method of Funding

1. Investment in an overseas JV / WOS may be funded out of one or more of the following sources:
  - i. drawal of foreign exchange from an AD bank in India;
  - ii. capitalisation of exports;
  - iii. swap of shares [valuation as mentioned in para B.1 (e)];
  - iv. proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs);
  - v. in exchange of ADRs/GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued thereunder from time to time by the Government of India;
  - vi. balances held in EEFC account of the Indian party and

vii. proceeds of foreign currency funds raised through ADR / GDR issues.

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

### General Permission

2. General permission has been granted to persons resident in India for purchase / acquisition of securities in the following manner:
  - (i) out of funds held in RFC account;
  - (ii) as bonus shares on existing holding of foreign currency shares; and
  - (iii) when not permanently resident in India, out of their foreign currency resources outside India

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

#### Prohibitions

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

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

A master circular on Overseas Direct Investment was issued by RBI on July 03, 2014 and was updated upto January 22, 2015, which is available at [www.rbi.org.in](http://www.rbi.org.in).

#### Check list - Direct Investment outside India – Automatic Route

Sl. No.	Particulars	
1	<p>Check whether the investment (total financial commitment) in overseas Joint Ventures/Wholly Owned Subsidiaries(WOS) does not exceed 400% of the networth as on the date of last audited Balance Sheet of Indian Party</p> <p>Also, ensure that prior approval of the Reserve Bank is obtained for any financial commitment exceeding USD 1 (one) billion (or its equivalent) in a financial year, even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet)</p> <p>It may be noted that the total financial commitment of the Indian</p>	

	<p>party in all the Joint Ventures / Wholly Owned Subsidiaries shall comprise of the following:</p> <ol style="list-style-type: none"> <li>a. 100% of the amount of equity shares;</li> <li>b. 100% of the amount of compulsorily and mandatorily convertible preference shares;</li> <li>c. 100% of the amount of other preference shares;</li> <li>d. 100% of the amount of loan;</li> <li>e. 100% of the amount of guarantee (other than performance guarantee) issued by the Indian party;</li> <li>f. 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian party provided the bank guarantee is backed by a counter guarantee / collateral by the Indian party;</li> <li>g. 50% of the amount of performance guarantee issued by the Indian party provided that the outflow on account of invocation of performance guarantee results in the breach of the limit of the financial commitment in force, prior permission of the Reserve Bank is to be obtained before executing remittance beyond the limit prescribed for the financial commitment.</li> </ol>	
2	Check whether the Indian entity has extended loan or guarantee if any only to overseas JV/WOS in which it has equity participation ?	
3	Ensure that the Indian party is not in RBI's Exporters caution list/list of defaulters.	
4	Ensure that all transactions relating B.1 to JV/WOS is routed through one branch of an authorised dealer bank to be designated by Indian Party. Also check that subsequent remittances are made only after receipt of Unique Identification Number for the first remittance.	
5	In case of partial/full acquisition of an existing foreign company, where investment is more than USD 5 million, the valuation of shares was made by Category I Merchant Banker/appropriate regulatory authority in a host country and in other cases by a chartered accountant.	
6	Ensure that shares acquired in any in exchange of ADRs/GDRs fulfils the criteria specified.	
7	Ensure that investment if any, in Nepal is made only in Indian Rupees.	

8.	Ensure that the reporting of ODI is made in form ODI within 30 days from the date of transaction.	
9.	Check whether the issue of guarantee by an Indian Party to stepdown subsidiary of JV/WOS is as per the conditions stipulated.	
10.	Ensure that the funding of ODI is as per the norms prescribed.	
11.	Ensure that the capitalisation of exports and other dues is as per the conditions stipulated.	
12.	Ensure that additional conditions for B.5 financial services sectors is fulfilled, if applicable.	
13.	Check whether the transfer of shares by resident to another resident or non-resident as the case may be is subject to the prescribed conditions.	
14.	Check whether the obligation of Indian party is fulfilled such as reporting of remittances, Annual Performance Report.	

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#### **Check list-Direct Investment outside India - Approval Route**

<i>Sl. No.</i>	<i>Particulars</i>	
1	Check whether prior approval of Reserve Bank of India is obtained in all cases which are not covered under the automatic route. For this purpose, application together with necessary documents should be submitted in Form ODI through their Authorised Dealer Category - I banks.	
2.	<p>Check whether</p> <ul style="list-style-type: none"> <li>• An Indian Party creates charge, by way of pledge, on the shares of Joint Venture (JV) or Wholly Owned Subsidiary (WOS) or Step Down Subsidiary (SDS) outside India as a security in favour of an Authorized Dealer or a public financial institution in India or an overseas lender, for availing of fund based or non-fund based facility for itself (i.e. the Indian party) or for its JV / WOS / SDS whose shares have been pledged, or for any other JV / WOS / SDS of the Indian party subject to the terms and conditions prescribed.</li> <li>• An Indian party creates charge (by way of mortgage, pledge, hypothecation or otherwise) on its assets [including the assets of its group company, sister concern or associate</li> </ul>	

	<p>company in India, promoter and / or director] in favour of an overseas lender as security for availing of the fund based and/or non-fund based facility for its Joint Venture (JV) or Wholly Owned Subsidiary (WOS) or Step Down Subsidiary (SDS) outside India subject to the terms and conditions prescribed.</p> <ul style="list-style-type: none"> <li>• An Indian party creates charge (by way of mortgage, pledge, hypothecation or otherwise) on the assets of its overseas JV or WOS or SDS in favour of an AD bank in India as security for availing of the fund based and/or non-fund based facility for itself or its JV or WOS or SDS outside India subject to the terms and conditions prescribed.</li> </ul>	
3	Whether approval of RBI is obtained for issuance of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries.	
4	<p>Check whether the investment by Indian Mutual funds registered with SEBI is as per the norms</p> <p>It may be noted that Indian Mutual Funds registered with SEBI are permitted to invest within an overall cap of USD 7 billion in:</p> <ul style="list-style-type: none"> <li>(i) ADRs / GDRs of the Indian and foreign companies;</li> <li>(ii) equity of overseas companies listed on recognised stock exchanges overseas ;</li> <li>(iii) initial and follow on public offerings for listing at recognized stock exchanges overseas;</li> <li>(iv) foreign debt securities in the countries with fully convertible currencies, short- term as well as long-term debt instruments with rating not below investment grade by accredited/registered credit agencies;</li> <li>(v) money market instruments rated not below investment grade;</li> <li>(vi) repos in the form of investment, where the counterparty is rated not below investment grade. The repos should not, however, involve any borrowing of funds by mutual funds;</li> <li>(vii) government securities where the countries are rated not below investment grade;</li> <li>(viii) derivatives traded on recognized stock exchanges overseaonly for hedging and portfolio balancing with underlying as securities;</li> <li>(ix) short-term deposits with banks overseas where the issuer is rated not below investment grade; and</li> <li>(x) units / securities issued by overseas Mutual Funds or</li> </ul>	

	Unit Trusts registered with overseas regulators and investing in (a) aforesaid securities, (b) Real Estate Investment Trusts (REITS) listed on recognized stock exchanges overseas, or (c) unlisted overseas securities (not exceeding 10 per cent of their net assets).	
5	Check whether Domestic Venture Capital Funds / Alternative Investment Funds registered with SEBI invest in equity and equity linked instruments of off-shore Venture Capital Undertakings, subject to an overall limit of USD 500 million	
6	<p>Check whether FIPB approval is obtained if the investment is by share swaps.</p> <p>It may be noted that In the case of investment by way of share swap, AD Category – I banks are additionally required to submit to the Reserve Bank the details of transactions such as number of shares received / allotted, premium paid / received, brokerage paid / received, etc., and also confirmation to the effect that the inward leg of transaction has been approved by FIPB and the valuation has been done as per the laid-down procedure and that the overseas company's shares are issued / transferred in the name of the Indian investing company. AD Category – I bank may also obtain an undertaking from the applicants to the effect that future sale / transfer of shares so acquired by Non-Residents in the Indian company shall be in accordance with the prescribed regulations.</p>	
7	Check whether the Indian party which has made direct investment abroad (a) receives share certificate or any other document as an evidence of investment, (b) repatriates to India the dues receivable from foreign entity, and (c) submit the documents / Annual Performance Report to the Reserve Bank, in accordance with the provisions prescribed.	

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# EXTERNAL COMMERCIAL BORROWING

Overseas ECBs refer to commercial loans in the form of bank loans, securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares), buyers' credit, suppliers' credit availed of from non-resident lenders with a minimum average maturity of 3 years.

**Foreign Currency Convertible Bonds (FCCBs)** : FCCBs mean a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency. The bonds are required to be issued in accordance with the scheme viz., "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993", and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments. The ECB policy is applicable to FCCBs. The issue of FCCBs is also required to adhere to the provisions of Notification FEMA No. 120/RB-2004 dated July 7, 2004, as amended from time to time.

**Preference shares** : Preferences Shares (i.e. non-convertible, optionally convertible or partially convertible) for issue of which, funds have been received on or after May 1, 2007 would be considered as debt and should conform to the ECB policy. Accordingly, all the norms applicable for ECB, viz. eligible borrowers, recognized lenders, amount and maturity, end use stipulations, etc. shall apply. Since these instruments would be denominated in Rupees, the rupee interest rate will be based on the swap equivalent of LIBOR plus the spread as permissible for ECBs of corresponding maturity.

**Foreign Currency Exchangeable Bonds (FCEBs)** : FCEBs means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. The FCEBs must comply with the "Issue of Foreign Currency Exchangeable Bonds (FCEB) Scheme, 2008", notified by the Government of India, Ministry of Finance, Department of Economic Affairs vide Notification G.S.R.89(E) dated February 15, 2008. The guidelines, rules, etc. governing ECBs are also applicable to FCEBs.

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 and specified service sectors in India as indicated under para I (A) (i) (a) are under the 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. It is clarified that eligibility for an ECB in respect of eligible borrowers, recognised lenders, end-uses, etc. have to be read in conjunction and not in isolation.

The master circular on External Commercial Borrowings and Trade Credits was issued on July 1st 2014, updated upto January 23, 2015 which is available at [www.rbi.org](http://www.rbi.org).

## Checklist on External Commercial Borrowing

### Automatic Route

<i>Sl. No.</i>	<i>Particulars</i>	
1	Check the Eligibility of borrower; whether the borrower obtained Loan Registration Number by submitting form 83 to RBI.	
2	Check the recognition of lender.	
3	Check whether the maximum amount of ECB by a corporate other than those in the hotel, hospital and software and corporate in miscellaneous services sectors is within USD 750 million or its equivalent during a financial year.	
4	Check whether ECB by Corporates in the services sector viz. hotels, hospitals and software and corporate in miscellaneous services sector is not more than USD 200 million or its equivalent in a financial year. The proceeds of the ECBs should not be used for acquisition of land.	
5	Check whether NGOs engaged in micro finance activities and Micro Finance Institutions (MFIs) raises ECB not more than USD 10 million or its equivalent during a financial year.	
6	Check whether NBFC-Infrastructure Finance Companies avail of ECB up to 75 per cent of their owned funds (ECB including outstanding ECBs) and hedge 75 per cent of their currency risk exposure.	
7	Check whether NBFC - Asset Finance Companies 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.	
8	Check whether SIDBI 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.	
9	Check whether ECB up to USD 20 million or its equivalent in a financial year with minimum average maturity of three years.	
10.	Check whether ECB above USD 20 million or equivalent and up to USD 750 million or its equivalent with a minimum average maturity of five years.	

11.	Check whether ECB up to USD 20 million or equivalent having call/put option provided the minimum average maturity of three years is complied with before exercising call/put option.	
12	Check the permitted End use requirements	
13	Check ECB proceeds parked overseas is invested in the permitted liquid assets.	
14	Check the Prepayment of ECB is up to USD 500 million and in compliance with the stipulated minimum average maturity period as applicable to the loan.	
15	Check whether the existing ECB is 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.	
16	Check All in Cost Ceiling prescribed.	
17	Check if ECB has been drawn down only after receipt of Loan Registration Number from the Reserve Bank of India.	
18	Check if ECB-2 Return is filed every month on or before 7 <sup>th</sup> of every month from receipt of LRN from RBI, till such time that ECB subsists.	

*Checked By*

*Dated .....*

*Reviewed By*

*Dated .....*

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# 7

## SECRETARIAL STANDARDS UNDER COMPANIES ACT, 2013

### Introduction and Need

It was observed that companies follow diverse secretarial practices while following the provisions of company law. Therefore, a need emerged to integrate, harmonise and standardise such practices so as to promote uniformity and consistency in corporate practices.

Recognising this need for integration, harmonisation and standardisation of diverse secretarial practices, the Institute of Company Secretaries of India, (ICSI), constituted the Secretarial Standards Board (SSB) in the year 2000 with the objective of formulating Secretarial Standards.

So far, the ICSI had issued ten Secretarial Standards under the Companies Act, 1956, viz.

- SS-1 : Secretarial Standard on Meetings of the Board of Directors
- SS-2 : Secretarial Standard on General Meetings
- SS-3 : Secretarial Standard on Dividend
- SS-4 : Secretarial Standard on Registers and Records
- SS-5 : Secretarial Standard on Minutes
- SS-6 : Secretarial Standard on Transmission of Shares and Debentures
- SS-7 : Secretarial Standard on Passing of Resolutions by Circulation
- SS-8 : Secretarial Standard on Affixing of Common Seal
- SS-9 : Secretarial Standard on Forfeiture of Shares and
- SS-10 : Secretarial Standard on Board's Report.

### Secretarial Standards and the Companies Act, 2013

The Companies Act, 2013 has recognised the need for every company to observe Secretarial Standards.

The term 'Secretarial Standard' is defined as an explanation to section 205 of the Companies Act, 2013 to mean secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

Section 118 (10) of the Companies Act, 2013 requires every company to observe secretarial standards with respect to General and Board meetings.

Also, as per section 205(1)(b), it is the duty of the company secretary to ensure that the company complies with the applicable secretarial standards.

Adherence to these Secretarial Standards is thus mandatory once these are issued by the Institute of Company Secretaries of India and approved by the Central Government.

To begin with, the Secretarial Standards Board of the Institute has finalized drafts of the following Secretarial Standards in the light of the provisions of the Companies Act, 2013:

- SS-1: Meetings of the Board of Directors
- SS-2: Secretarial Standard on General Meetings

After these are approved by the Central Government, it would be mandatory for the companies to observe the same.

### **Secretarial Standards Board (SSB) and Secretarial Standards**

The SSB identifies the areas in which Secretarial Standards need to be issued. Once areas are identified, the standards are formulated by the Board which constitutes eminent professionals from the industry, nominees of professional bodies, regulators and industry associations.

These are prepared taking into consideration, the applicable laws, business environment and best secretarial practices.

SSB also clarifies the issues arising out of such Standards and issues guidance notes for the benefit of members of ICSI, the corporate sector and other users.

Secretarial Standards are prepared in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.

The Secretarial Standards issued by the ICSI generally contain the following:

- (a) set of principles relating to the subject of the Standard.
- (b) Definitions and Explanations of terms used in the Standard.
- (c) Scope of the standard.
- (d) The standard.
- (e) Date from which the standard would be effective.
- (f) Annexures

It is the beginning of a new era where non financial standards have been given due importance and statutory recognition.

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# 8

## LABOUR LAWS

(General Laws)

### Introduction

The prosperity of any economy largely depends on industry. There can be no labour without activity of industrial nature. The industrial law covers a spectrum of activities like manufacturing, trading, transporting, exporting, importing, storing, polishing, packaging etc. It also covers conditions of labour including wages, deductions against Provident Fund, ESI, employment of contractual labour etc. Labour laws focus its attention more on work aspects and the consequent remuneration whereas industrial law aims at the origin, growth and regulation of industries, employing specified number of workers including women and children. Labour legislations are aimed at achieving congenial relationship between employer and workmen.

Two basic features of labour legislations are :

- (i) It aims at the establishment of amicable relationship between a worker and employer.
- (ii) It emphasizes that both management and labour belong to a single family and should endeavour to improve the standard of living of the workers, giving room for labour harmony.

The relationship between labour and management is based on mutual adjustment of interests and goals. It depends on economic, social and psychological satisfaction of the parties. Higher the satisfaction, healthier the relationship.

The Directive Principles of State Policy under Article 38 of our Constitution require the State to bestow social security on all. The entire labour legislation originates from the Directive Principles of the State Policy. Legislations providing *inter-alia* minimum wages, safeguarding prompt payment of wages without deductions, ensuring benefit during period of sickness, assuring legitimate share in the profit of the management, preventing exploitation of the workers and above all promoting better relations by joint participation of the workers in the management were all formulated with a view to improving the standard of living of the workers.

### Need for Labour Laws Compliance

Business enterprises employing personnel, both in the executive cadre as also those categorized as workers in the context of labour laws are required to be fully aware of these laws. Further, considering the number and complexity of the labour laws, there is a need for monitoring compliance of such laws on a regular basis.

### Scope of Labour Laws Compliance

Labour laws compliance is a unique concept and differs from other compliance/audits in the country. Focus of all other audits is on financial implications on company/business entity, with little consideration of human values. In terms of decision of ICSI Council on the scope of Secretarial Audit, it includes examining and reporting on whether the adequate systems and processes are in

place to monitor and ensure compliance with general laws like labour laws, competition law, environmental laws etc.

### **Benefits of Labour Laws Compliance**

The compliance of labour laws would benefit employees in terms of increased social security, lower absenteeism and congenial atmosphere. It helps to detect non-compliance of various labour laws applicable to an organization and to take corrective measures. The employer would gain in terms of lower penalty, higher productivity and increased belongingness. Directors of companies will be relieved of penalties and prosecutions. At the same time the compliance mechanism would help the Government in ensuring that the workers have not been deprived of benefits to which they are entitled, thus providing a net for social security.

To ensure existence of adequate systems and processes in the company, indicative list of Central legislations together with the compliance requirements is presented in this chapter. In addition, there may also be Local State Labour laws which are applicable to company.

<i>Sl. No.</i>	<i>Name of the Act</i>
1.	Factories Act, 1948
2.	Industrial Disputes Act, 1947
3.	The Payment of Wages Act, 1936
4.	The Minimum Wages Act, 1948
5.	Employees' State Insurance Act, 1948
6.	The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
7.	The Payment of Bonus Act, 1965
8.	The Payment of Gratuity Act, 1972
9.	The Contract Labour (Regulation & Abolition) Act, 1970
10.	The Maternity Benefit Act, 1961
11.	The Child Labour (Prohibition & Regulation) Act, 1986
12.	The Industrial Employment (Standing Order) Act, 1946
13.	The Employees' Compensation Act, 1923
14.	The Apprentices Act, 1961
15.	Equal Remuneration Act, 1976
16.	The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959

## CHECKLIST (S)

### Factories Act, 1948

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Factories Act, 1948 is applicable to the company.		
2.	The occupier has atleast fifteen days before occupying or using any premises as a factory, sent to the Chief Inspector a written notice as contained in section 7.		
3.	The company has renewed the licence on an yearly basis within 2 months from the expiry of the licence as contained under Section 7.		
4.	The provisions regarding registration / licence as prescribed in section 6 have been complied with.		
5.	The employer has appointed the manager/ occupier of the factory under the Act and sent notice to the competent authority.		
6.	The company has complied with:  (i) health measures as provided in chapter III;  (ii) safety measures as provided in chapter IV;  (iii) applicable provisions of chapter IV-A;  (iv) welfare measures as provided in chapter V;  (v) working hours of adults as provided in chapter VI;  (vi) employment of Young Persons as provided in chapter VII; and  (vii) annual leave with wages as provided in chapter VIII.		

*Checked by:*

*Date:*

*Reviewed by:*

*Date:*

### Industrial Disputes Act, 1947

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Industrial Disputes Act, 1947 is applicable to the company.		
2.	There is an industrial dispute, as defined under Section 2-A of the Act.		
3.	The company has maintained a muster roll as required under section 25-D of the Act.		
4.	The Company is an industrial establishment, having one hundred or more workmen. If yes, the company has constituted Works Committee as required under Section 3 of the Act.		
5.	Any change in the conditions of service applicable to any workman in respect of any matter specified in the fourth schedule of the Act, has been made after giving 21 days notice to the workmen, of such intention in Form E, as required under Section 9-A of the Act, read with Rule 34.		
6.	The company has twenty or more workmen. If yes, the company has constituted Grievance Redressal Committee as required under Section 9-C of the Act.		
7.	The Company is a Public Utility Service. If yes, the lock-out if any has been carried out after giving sufficient notice in Form N, as required under Section 22(3) of the Act read with rule 73.		
8.	The Company has complied with the conditions precedent to the retrenchment of workmen, as required under Section 25-F and Section 25-N, as applicable.		
9.	The Company maintains a muster roll for its workmen as required under Section 25-D.		
10.	The Company has compensated for being laid off, the workmen, whose name is in the muster rolls and has completed not less than one year of continuous service.(Rule 25C)		
11.	The company has compensated the workmen in case of closing down of undertakings, as prescribed in section 25-FFF.		

*Checked by:*

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*Date:*

*Date:*

### The Payment of Wages Act, 1936

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Payment of Wages Act, 1936 is applicable to the company.		
2.	The payment of wages is made before:  (a) before the expiry of the 7th day of the following month, when less than 1000 persons are employed.  (b) before the expiry of the 10th day of the following month, when more than 1000 workers are employed.		
3.	The deductions made from the wages of the employee are in accordance with section 7 of the Act.		
4.	Any deduction has been made on account of damage or loss.		
5.	If any deduction has been made on account of damage or loss, show cause notice has been given to the employee.		
6.	In case any deduction has been made for unauthorized absence, opportunity of being heard is given.		
7.	The registers and records giving particulars of persons employed, the work performed by them, the wages paid to them, the deductions made from their wages and the receipts given by them are maintained and preserved for a period of 3 years or more.		
8.	The employer has displayed the abstract of the Act and Rules made thereunder in the manner prescribed under section 25.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### The Minimum Wages Act, 1948

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Minimum Wages Act, 1948 is applicable to the Company.		
2.	The company has been paying the minimum wages as notified from time to time by the appropriate Government under the Act.		
3.	The company has paid wages in cash. If not, the wages in kind has been paid after following the procedure prescribed under section 11 of the Act.		
4.	The company follows the conditions prescribed with regard to working hours, working day under section 13 of the Act.		
5.	The company has paid overtime rate as prescribed under section 14 of the Act read with rule 25.		
6.	The company has maintained all registers and records that are required to be maintained under section 18 of the Act and rule 26.		
7.	The company has followed the procedure prescribed with respect to payment of undisbursed amounts due to employees, for reasons such as death, whereabouts not known etc.		
8.	The company has followed the procedure prescribed in rule 21 with respect to deductions made from the wages.		
9.	The company has followed time and conditions of payments of wages prescribed in rule 21.		
10.	Notices in Form No. IX-A, containing the minimum rate of wages has been displayed at the main entrance to the establishment, as specified in rule 22.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### Employees' State Insurance Act, 1948

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Employees' State Insurance Act, 1948 is applicable to the company.		
2.	The factory or establishment to which the Act applies has been registered.		
3.	The rate of contribution of the employer and employee is in accordance with the Act. [Rule 51 of ESI (Central) Rules, 1950.]		
4.	The manner and time Limit for making payment of contribution is in accordance with the Act.		
5.	The employer has maintained the register of employees in Form No. 6.		
6.	Submission of returns/reports: (i) Annual return in Form No. 01-A; (ii) Return of contributions in Form No. 5; (iii) Report of accident in Form No. 12; (iv) Report of death of insured persons.		
7.	The benefits provided in Chapter V of the Act were made available to the applicable employee.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is applicable to the company.		
2.	The contributions made by the employer and the employee and payment thereof are in accordance with para 29 and 30 of the Employees' Provident Funds Scheme, 1952.		
3.	The employer has obtained declarations from the persons taking up the employment. (Para 34 of the scheme)		

4.	The employer has prepared the contribution card in Form No. 3 or 3-A as appropriate in respect of every employee in his employment.		
5.	The employer has sent to the Commissioner: a) Consolidated return in the form specified by the commissioner. b) Monthly return in Form No. 5 together with declaration in Form No. 2. c) In such form as the commissioner may specify of employees leaving service of the employer during the preceding month. d) Inspection note book in such form as the commissioner may specify, is maintained. e) Accounts relating to amount contributed to the fund by the employer and by the employee have been maintained.  (Para 36 of scheme)		
6.	The employer has furnished particulars of ownership in Form No. 5-A to the Regional Commissioner.(Para 36 A of scheme)		
7.	The employer has forwarded the monthly abstract to the commissioner. [Para 38 (2) of scheme]		
8.	Consolidated annual contribution statement in Form No. 6-A was sent to the commissioner. [Para 38(3) of scheme]		
9.	Submission of contribution card to the commissioner with a statement in Form No. 6.		
10.	Any proceedings under the Act have been initiated against the Directors for recovery of dues.		
11.	If the Employer has created its own trust, whether the terms of trust are more beneficial than those provided under the trust.		
12.	The conditions imposed by PF Commissioner for the creation of Trust are satisfied.		
13.	The provisions relating to Employees' Pension Scheme, 1995 have been complied with.		
14.	The provisions relating to Employees' Deposit Linked Insurance Scheme, 1976 have been complied with.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### The Payment of Bonus Act, 1965

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Payment of Bonus Act, 1965 is applicable to the company.		
2.	Computation of available surplus, allocable surplus and bonus are correctly arrived at.		
3.	Any amount has been deducted from bonus and if so, whether they are in accordance with the provisions of section 18.		
4.	Bonus is paid to the eligible employees.		
5.	The minimum or maximum amount of bonus paid is in accordance with section 10 or section 11, as the case may be.		
6.	<p>The company has paid bonus to the employee:</p> <p style="padding-left: 40px;">(a) Where there is a dispute regarding payment of bonus pending before any authority under section 22- within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;</p> <p style="padding-left: 40px;">(b) In any other case-within a period of eight months from the close of the accounting year.</p>		
7.	The company has maintained the registers as provided in rule 4.		
8.	The company has submitted the annual return of payment of bonus to the Inspector in Form No. D within thirty days after the expiry of the time limit prescribed in section 19.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### The Payment of Gratuity Act, 1972

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Payment of Gratuity Act, 1972 is applicable to the company.		
2.	There are employees who have worked for a continuous period of 5 years or more.		
3.	Any gratuity has been paid to any employee. If yes, whether it has been paid within 30 days.		
4.	The employer has displayed a notice as provided in rule 4, specifying the name of the officer with designation who is authorised to receive notice under the Act or the rules made thereunder.		
5.	The employer has complied with the provisions related to nominations as specified in rule 6.		
6.	Gratuity of any employee has been forfeited. If yes, whether an opportunity of being heard is given?		
7.	The gratuity has been forfeited for the reasons as specified in the Act.		
8.	The employer has displayed the abstract of the Act and rules made thereunder at or near the main entrance of the establishment, as specified in rule 20.		
9.	The employer has obtained insurance for liability of payment of gratuity as specified in section 4A of the Act.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### The Contract Labour (Regulation and Abolition) Act, 1970

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Contract Labour (Regulation and Abolition) Act, 1970 is applicable to the company.		
2.	The principal employer has obtained the certificate of registration for the establishment.		
3.	The appropriate Government has by a notification prohibited the employment of contract labour under section 10.		

4.	The contractors have obtained license from the Licensing Authority for contract labour undertaken or executed by them.		
5.	The contractors have got their license renewed in time.		
6.	The contractors are employing workmen as per license and registration certificate.		
7.	The number of workmen actually employed by the contractors tallies with the number of workmen shown in the license.		
8.	The contractors are sending half-yearly returns in Form No. XXIV in time.		
9.	Where the wage period is one week or more, the contractors are issuing wages slips in Form No. XIX one day prior to the disbursement of wages.		
10.	The principal employer maintains register of contractors in Form No. XII.		
11.	The principal employer has sent annual return in Form No. XXV to the Registering Officer.		
12.	The principal employer has within fifteen days of commencement or completion of each contract, submitted return in Form No. VI-B to the Inspector.		
13.	Minimum rate of wages are being paid to the contractor labour in the presence of authorized representative of the principal employer.		
14.	The authorized representative of the principal employer gives a certificate to this effect at the end of the entries in the register of wage- cum- Muster Roll, as the case may be.		
15.	The contractors are properly depositing ESI, EPF contributions in respect of their workmen and submitting copies of the challan to the HR Department of the company.		
16.	The contract labour is provided the facility of rest room, canteen, wash room, first aid and other facilities.		

17.	The contract labour is granted leave with wages.		
18.	The contract labour is being paid over time at double rate.		
19.	The workmen engaged by the contractor are ensured benefits from ESI Scheme including issue of cards, temporary slips and are provided medical facilities.		
20.	The contract labour is being given contribution slips of EPF issued by the Regional Provident Commissioner.		
21.	The payment of wages to contract labour is being made in accordance with rule 65.		
22.	The leave applications and gate passes of the contract labour are being signed by the contractor and his agent.		
23.	The gate passes to the contract Labour are issued and signed by the company's employees.		
24.	The contractors are maintaining records as provided in rule 78.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### **The Maternity Benefit Act, 1961**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Maternity Benefit Act, 1961 is applicable to the company.		
2.	The employer has knowingly employed a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of her pregnancy.		
3.	Any pregnant woman has made any request not to give her any work which is of an arduous nature or which involves long hours of standing, etc. during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery.		
4.	Any woman employee is entitled for maternity benefit, medical bonus and nursing break and if yes, whether payment has been made and nursing break was allowed in accordance with the Act.		

5.	The employer exhibited the abstract of the provisions of the Act and the rules made thereunder in accordance with section 19 of the Act.		
6.	Whether the employer has maintained muster rolls, registers and records as prescribed, if any, by the appropriate Government.		
7.	Whether the employer has submitted annual return in the form prescribed, if any, by the appropriate Government.		

Checked by:

Reviewed by:

Date:

Date:

**The Child Labour (Prohibition and Regulation) Act, 1986**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Child Labour (Prohibition and Regulation) Act, 1986 is applicable to the company.		
2.	The occupier has sent notice to Inspector as per section 9 when a child is employed or permitted to work.		
3.	The employer has employed any child labour in occupations set forth in Part-A or Process set forth in Part-B of the Schedule to the Act.		
4.	The employer has maintained the register in Form No. A in respect of children employed or permitted to work as specified in section 11.		
5.	The occupier has displayed notice containing abstract of sections 3 and 14 as specified in section 12.		

Checked by:

Reviewed by:

Date:

Date:

**The Industrial Employment (Standing Orders) Act, 1946**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Industrial Employment (Standing Orders) Act, 1946 is applicable to the company.		
2.	One hundred/One hundred fifty* or more workmen are employed, or were employed on any day of the preceding twelve months. *Karnataka & Maharashtra		

3.	The industrial establishment has submitted to the Certifying Officer, five copies of the draft Standing Orders proposed by it for adoption in the establishment.		
4.	The text of the Standing Orders as finally certified has been prominently posted by the company in English and in the language understood by the majority of workmen on special boards to be maintained for the purpose.		
5.	The industrial establishment has modified the Standing Orders on agreement between the employer and the workmen or a trade union or other representative body of the workmen.		
6.	Any workman was suspended by the industrial establishment pending investigation or inquiry into complaints or charges of misconduct.		
7.	The industrial establishment has paid any subsistence allowance to any suspended employee.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

**The Employees' Compensation Act, 1923  
(earlier known as Workmen's Compensation Act, 1923)**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Employees' Compensation Act, 1923 is applicable to the company.		
2.	Any personal injury is caused to an employee by an accident arising out of or in the course of employment. If yes, the company has paid compensation as prescribed under Section 4 of the Act.		
3.	The company has maintained notice book in its premises, for reporting notice of accidents as prescribed in Section 10(3) of the Act.		
4.	The company has reported of fatal accident or serious bodily injuries in Form No. E-E to the Commissioner, as prescribed in section 10-B read with Rule 11 of the rules.		
5.	The company has deposited compensation with the Commissioner in respect of the workman whose injury		

	has resulted in death and has furnished statement in Form No. A, OR In other cases company shall furnish statement in Form 'AA', as prescribed in section 8(1) read with rule 6(1). (As Applicable)		
6.	The company has furnished a statement in Form 'D', while depositing compensation, as required under section 8(2) read with rule 9.		
7.	The company has sent a return as to compensation paid during the previous year. (As specified by the State Government in respective state law)		
8.	On settlement of compensation amount in between company and workman, company executed a memorandum of agreement with the workman in Form No. K, L or M, as the case, may be and submitted such agreement along with an application to register it to the Commissioner, as prescribed in rule 48.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### **The Apprentices Act, 1961**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Apprentices Act, 1961 is applicable to the company.		
2.	The age of apprentice is more than 14 years and for designated trade related to hazardous Industries is more than 18 years.		
3.	The apprentices are employed in designated trade.		
4.	The physical fitness of the apprentices is as per the prescribed standard.		
5.	The working hours, overtime, leave and holidays of apprentices are within the limit as prescribed in the Act.		
6.	Contract of apprenticeship has been entered into with the apprentice.		
7.	Minimum stipend has been paid by the employer.		
8.	The register of attendance of apprentices undergoing apprentice training is maintained by the employer.		

9.	The provisions for reservation of apprentice training places for SC/ST/OBC have been made in designated trades.		
10.	The contract of apprenticeship was sent by the employer to the apprenticeship advisor/entered on the port-site within 7 days for verification & registration.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### **Equal Remuneration Act, 1976**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	Equal Remuneration Act, 1976 is applicable to the Company.		
2.	Payment of equal remuneration has been made to all for same work or work of similar nature and there is no discrimination between men and women while recruiting or subsequent to recruitment, promotion etc. (As per Section 4 read with section 5)		
3.	The company has maintained register in relation to workers in Form No. D as required under rule 6.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

### **The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 is applicable to the company.		
2.	The company has notified the vacancies to employment exchanges, as prescribed in section 4 of the Act read with rule 5.		
3.	The company has furnished quarterly returns in Form No. ER-1, biennial return in Form No.ER-II to local employment exchange as prescribed in rule 6.		

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

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# 9

## COMPETITION LAW

*(General Laws)*

### **Introduction**

Competition/Anti-trust issues in India are governed by the Competition Act, 2002 (“the Act”). Amongst other things, the Act provides a general legal framework prohibiting anti-competitive agreements, abuse of dominant position and regulating certain combinations.

To implement the Act, the Competition Commission of India (“CCI”) has been established. In addition, the Act also gives the CCI the responsibility of undertaking competition advocacy. Under the Act, CCI has also been explicitly empowered to exercise jurisdiction in relation to acts taking place outside India but having an effect on competition in India. The Act also provides for establishment of the Competition Appellate Tribunal (“COMPAT”) to hear and dispose of appeals against directions, decisions and orders passed by the CCI and to adjudicate on claims for compensation in certain cases. Further, the Act, provides for appeal against any decision or order of the COMPAT to the Supreme Court of India.

### **Applicability**

The Act, not only applies to the private and public sector but also includes entrepreneur associations and Government departments (except activities relating to the sovereign functions of the Government and those relating to atomic energy, currency, defence and space). Further, the Act applies not only to activities in India, but also to activities outside of India that affect competition within India. Hence, all businesses (large and small) are covered by the Act.

### **Competition Law Compliance**

It is important to note that the Act operates on a “self-assessment” basis, meaning that businesses must determine for themselves whether its agreement, conduct, M&A transaction will be lawful or could breach the provisions of the Act particularly in view of the fact that there are no block exemptions, market share based test to evaluate anti-competitive conduct as prevalent in other matured jurisdictions such as European Union. In this context, it is for businesses to carry out self assessment of their business practices and take steps to ensure that their practices, business contracts and dealings etc. comply with the provisions of the Act.

### **Anti Competitive Agreements**

Following general checklist may be followed while carrying out assessment of agreements including horizontal and vertical agreements such as tie-in arrangements, exclusive supply agreement, exclusive distribution agreement, refusal to deal, resale price maintenance from competition law compliance perspective:

- Determine whether enterprise or association of enterprises or person or association of persons have entered into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services.
- Determine what are pro-competitive effects and anti-competitive effects produced by the restriction imposed in the agreement in terms of section 19 (3) of the Act i.e. factors to be considered for determining appreciable adverse effect on competition.
- Assess whether the pro-competitive effects outweigh the anti-competitive effects.

**CHECKLIST FOR ANTI-COMPETITIVE AGREEMENTS**  
(inclusive check-list)

Sl. No.	Particulars	Remarks
<b>While Dealing with Competitors (Horizontal Agreements)</b>		
1.	The company has not jointly determined selling or purchase prices.	
2.	The company has not jointly agreed on rebates, discounts.	
3.	The company has not acted on circulars/notices/letters etc. of a trade association in relation to price.	
4.	The company has not indulged in collective price-fixing or price co-ordination of any product.	
5.	The company has not shared information about prices, discounts, profit margins, cost structures, during meetings of a trade association.	
6.	The company has not mutually agreed not to supply certain customers or not to purchase from certain suppliers.	
7.	The company has not agreed with competitors to make the supply or purchase of goods subject to certain mutually agreed conditions.	
8.	The company has not shared or allocated markets between competitors in respect of specific territories, products, customers or sources of supply.	
9.	The company has not fixed production, buying and selling quotas between competitors.	
10.	The company has not made a statement indicating advance knowledge of the offers of the competitors.	
11.	The company has not given a false impression that the enterprise is a party to any anti-competitive agreement.	
12.	The company has not discussed among competitors of such matters as need for changes in price levels, prospective production plans, allocation of markets, action aimed at hindering the prospects of competitors, or the like.	
13.	The company has not agreed in writing or in any other way on prices or pricing policy.	

14.	The company has not restricted the liberty of competitors to promote and sell products at independently determined prices and conditions.	
15.	The company has not agreed to adopt the same price list.	
16.	The company has not discussed future prices, price changes, or price formulas.	
17.	The company has not discussed terms and conditions of business.	
18.	The company has not discussed marketing programmes or allowances.	
19.	The company has not shared or partitioned markets or customers.	
20.	The company has not agreed to limit output or investment.	
21.	The company has not discussed or exchanged confidential business information.	
<b>While Bidding in a Tender</b>		
22.	The company has not agreed to submit identical bids	
23.	The company has not agreed as to who shall submit the lowest bid, agreements for the submission of cover bids (voluntarily inflated bids).	
24.	The company has not agreed not to bid against each other.	
25.	The company has not agreed on common norms to calculate prices or terms of bids.	
26.	The company has not agreed to squeeze out outside bidders.	
27.	The company has not agreed on designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis.	
28.	The company has not brought multiple bids to a bid opening and submits its bid only after coming to know as to who else is bidding.	
29.	The company has not made a statement that a bid is a 'complementary', 'token 'or' cover' bid.	

30.	The company has not made a statement that the bidders have discussed prices and reached an understanding.	
31.	The company has not agreed as to the bids which any of the parties may offer at an auction for the sale of goods or any agreement through which any party agrees to abstain from bidding for any auction for the sale of goods or any agreement through which any party agrees to abstain from bidding for any auction for the sale of goods, which eliminates or distorts competition.	
<b>While Written Communications</b>		
32.	The company has not used ambiguous or misleading language that may convey suspicious anti- competitive conduct such as “please destroy or delete after reading”, “no copies to be made”, “the main purpose of this transaction/conduct is to oust competitor”.	
33.	The company has not used phrases that suggest that competitors/distributors will follow price rise, stick to agreed price.	
34.	The company has not used any expressions which are hyperbole and slangs.	

*Checked by:*

*Reviewed by:*

*Date:*

*Date:*

## **ABUSE OF DOMINANCE**

Following general checklist may be followed while carrying out assessment of abuse of dominant position from competition law compliance perspective:

- Determine whether enterprise or group is dominant in a relevant market. In other words, first determine relevant market in terms of section 19 (6) and (7) of the Act and
- Thereafter, determine whether the enterprise or group is in dominant position in the defined relevant market in terms of section 19 (4) read with Explanation (a) to section 4 of the Act.
- Once it is established that an enterprise or group is dominant in defined relevant market, it must be ensured that the conduct/act of such enterprise or group does not fall under any abuse of the type specified under section 4(2) (a) to (e) of the Act as the same will be considered as abuse of dominant position.

### CHECKLIST FOR ABUSE OF DOMINANCE (inclusive checklist)

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1.	The company has not imposed unfair or discriminatory condition in purchase or sale. However, it may be noted that unfair or discriminatory condition adopted to meet the competition may not be abusive.	
2.	The company has not imposed unfair or discriminatory price (including predatory price) in purchase or sale. However, unfair or discriminatory price adopted to meet the competition may not be abusive.	
3.	The company has not limited or restricted production of goods or services or market.	
4.	The company has not limited or restricted technical or scientific development relating to goods or services to the prejudice of consumers.	
5.	The company has not indulged in practice or practices resulting in denial of market access in any manner.	
6.	The company has not made conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.	
7.	The company has not used dominant position in one relevant market to enter into, or protect, other relevant market.	

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### REGULATION OF COMBINATIONS

Following general checklist may be followed while carrying out assessment of combinations from competition law compliance perspective at the earliest of deal/transaction negotiation process:

- Check whether mergers, acquisitions and amalgamations (as the case may be) qualifies as combination under the Act i.e. whether they are within the foot-print of Section 5

thresholds. These thresholds determine whether the proposed combination would qualify as a “combination” and be then covered by the regulatory and operative provisions of Section 6. The current thresholds appearing in Section 5 of the Act are as follows:

<b><i>Individual</i></b>	<b><i>Group</i></b>
<p>Either the combined assets of the enterprises are more than Rs. 1,500 crores in India or the combined turnover of the enterprise is more than Rs. 4,500 crores in India. In case either or both of the enterprises have assets/ turnover outside India also, then the combined assets of the enterprises are more than US\$ 750 millions, including at least Rs. 750 crores in India, or turnover is more than US\$ 2250 millions, including at least Rs. 2,250 crores in India.</p>	<p>The group to which the enterprise whose control, shares, assets or voting rights are being acquired would belong after the acquisition or the group to which the enterprise remaining the merger or amalgamation would belong has either assets of more than Rs. 6000 crores in India or turnover more than Rs. 18000 crores in India. Where the group has presence in India as well as outside India then the group has assets more than US\$ 3 billion including at least Rs. 750 crores in India or turnover more than US\$ 9 billion including at least Rs. 2250 crores in India.</p>

- Check whether mergers, acquisitions and amalgamations (as the case may be) falls within any special exemptions provided therein, and unless exempted, the proposed transaction will have to be notified to the CCI. In this regard, following may be noted:
  1. Subject to certain requirements, a “combination” resulting from a transaction involving share subscription, financing facility or acquisition by a Public Financial Institution, Foreign Institutional Investor, Bank or Venture Capital Fund is exempt from scrutiny by the CCI.
  2. The Central Government has also issued notifications in March 2011 exempting certain transactions for a limited period of time i.e. till March 2016 (5 years), such as acquisition (of control, voting rights, shares or assets) of an enterprise having assets of Rs. 250 crores or less or turnover of Rs. 750 crores in India or less; combination by a Group exercising less than 50% of the voting rights in the other enterprise.
  3. Regulation 4 of the Procedural Regulations clarify that since the categories of combinations mentioned in Schedule I are ordinarily not likely to cause an appreciable adverse effect on competition in India, notice under sub-section (2) of section 6 of the Act need not normally be filed.

**CHECKLIST – REGULATION OF COMBINATIONS**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Remarks</i>
1.	The transaction qualified as a “combination” under Section 5 of the Act.	
2.	Mandatory notice to the CCI is filed, in case of merger or amalgamation, within 30 days of approval of the proposal relating to merger or amalgamation by the Board of directors of the enterprises concerned.	
3.	Mandatory notice to the CCI is filed, in case of acquisition or acquiring of control, within 30 days of execution of any agreement or other document.	
4.	Notice was given to CCI is in terms of the Procedural Regulations issued by CCI	
5.	Transaction has taken effect only after 210 days of such mandatory notice to CCI or from the date the CCI passes an order approving proposed combination whichever is earlier.	
6.	There is no premature pre-closing activity involving sharing of competitively sensitive information or joint marketing, production.	
7.	If, the transaction involves any substantive competition/antitrust risk, the risk is allocated amongst the parties to the transaction.	

*Checked By*

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# 10

## ENVIRONMENTAL LAWS

*(General Laws)*

### Introduction

India's economic development propelled by rapid industrial growth and urbanization is causing severe environmental problems that have local, regional and global significance. Recognising the need for regulating the factors which are affecting environment, Government of India has established an environmental legal and institutional system to meet these challenges within the overall framework of India's development agenda and international principles and norms.

### Legal Framework

India has an elaborate legal framework with number of laws relating to environmental protection. Key national laws include the following:

- Water (Prevention and Control of Pollution) Act, 1974;
- Water (Prevention and Control of Pollution) Cess Act, 1977;
- Air (Prevention and Control of Pollution) Act, 1981;
- Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biodiversity Act, 2002;
- The National Green Tribunal Act, 2010;
- Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008.

### Checklists

#### The Environment (Protection) Act, 1986

#### [Read With The Environment (Protection) Rules, 1986]

<i>Sl. No</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Company has received any direction from the Central Government in writing for the closure, prohibition or regulation of any industry, operation or process; or stoppage or regulation of the supply of electricity or water or any other service under section 5 of the Act		
2.	The company complied with the directions received from Central Government under section 5 of the Act.		
3.	The Company does not discharge or emit or permit		

	to be discharged or emitted any environmental pollutants in excess of such standards as specified under section 7 of the Environment (Protection) Act, 1986 read with rule 3A of the Environment (Protection) Rules, 1986.		
4.	The Central Government or any officer empowered by it in this behalf have taken samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed for the purpose of analysis.		
5.	Any person empowered by the Central Government has carried out inspection for determining whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with;		
6.	The company complied with the safeguard measure as prescribed for handling any hazardous substance		
7.	In case of discharge of environmental pollutant in excess of prescribed standard, the Company has given intimation of the fact of such occurrence or apprehension of such occurrence to all the following authorities or agencies, namely - <ul style="list-style-type: none"> <li>(i) The officer-in-charge of emergency or disaster relief operation in a district or other region of a state or Union territory specified by whatever designation by the Government of the said State or Union territory, and in whose jurisdiction the industry, process or operation is located.</li> <li>(ii) Central Board or a State Board as the case may be and its regional officer having local jurisdiction who have been delegated powers under section 20, 21, 23 of the Water (Prevention and Control of Pollution) Act 1974 and section 24 of the Air (Prevention and Control of Pollution) Act, 1981.</li> <li>(iii) The statutory authorities or agencies specified in column 3 in relation to places mentioned in column 2 against thereof of the Schedule II.]</li> </ul>		

8.	The Company has submitted an environmental audit report for the financial year ending the 31st March in Form V to the concerned State Pollution Control Board on or before the 30th Day of September.		
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**The Hazardous Wastes (Management, Handling And Transboundary Movement) Rules, 2008**

<i>Sl. No</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Company generates the hazardous waste in its establishment and engaged in handling of hazardous wastes as specified in the Schedules to the Hazardous Wastes (Management, Handling And Transboundary Movement) Rules, 2008.		
2.	The occupier takes adequate steps for safe and environmentally sound handling of hazardous wastes generated in his establishment.		
3.	The occupier gives to the operator of a facility information regarding disposal of hazardous wastes as determined by the State Pollution Control Board.		
4.	The occupier takes all adequate steps while handling hazardous wastes.		
5.	The occupier obtained authorization for handling hazardous wastes.		
6.	The occupier maintains the record of hazardous wastes handled by him in Form 3.		
7.	The occupier prepared and submitted to the State Pollution Control Board, an annual return containing the details specified in Form 4 on or before the 30th day of June following to the financial year to which that return relates.		
8.	The occupier made an application for the renewal of an authorization in Form 1, before its expiry to the State Pollution Control Board.		

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**The Water (Prevention & Control of Pollution) Act, 1974**  
**[Read with Water (Prevention & Control of Pollution) Rules, 1975]**

<i>Sl. No</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Company has got any direction from the State Board or any officer empowered by it for abstracting water from any such stream or well in the area in quantities which are substantial in relation to the flow or volume of that stream or well or is discharging sewage or trade effluent into any such stream or well, to give such information as to the abstraction or the discharge at such times and in such form as may be specified in the directions.		
2.	Whether the company complied with the direction of State Board or any other officer empowered.		
3.	The State Board or any officer authorized in this behalf have taken (i) Samples of water from any stream or well. (ii) Samples of any sewage or trade effluent passing from any plant or vessel or over any place into any such stream or well.		
4.	Person authorized by the State Board have inspected the premises of the company to determine whether an order or direction is being complied with or for the purposes of examining plant, premises or any material object or for search and seizure of any material object which may furnish evidence of Commission of an offence under the Act.		
5.	Prior Consent of the State Board under section 25 is taken (i) to set up any industry, plant or process which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land ;or (i) bring into use any new or altered outlets for the discharge of sewage; or (ii) begin to make any new discharge of sewage.		

6.	Any Notice has been received by the company from state board for not taking prior consent required as per section 25 (1) to establish any industry , operation or process, or any treatment and disposal system or any extension or addition thereto, or using the new or altered outlet for discharge of sewage or started new discharge of sewage, as the case may be.		
7.	The company has received order from State Board to remove the matter, which is, or may cause pollution; or remedy or mitigate the pollution, or issue prohibition orders to the concerned persons from discharging any poisonous or noxious or polluting matter.		
8.	The company has received an order under section 33 (2) restraining the company from polluting the water in any stream or well.		
9.	The company has received any directions in writing for the closure, prohibition or regulation of any industry, operation or process; or the stoppage or regulation of supply of electricity, or water or any other service under section 33A.		

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**The Air (Prevention & Control of Pollution) Act, 1981**  
**[Read With The Air (Prevention & Control Of Pollution) Rules, 1982]**

<i>Sl. No</i>	<i>Particulars</i>	<i>Compliance</i>	<i>Remarks</i>
1.	The Company has established any industrial plant in an air pollution control area. If yes, whether the company has taken previous consent of the State Pollution Control Board.		
2.	The Company has made an application for consent of the State Board under subsection (1) in the prescribed form and the application contained the prescribed particulars.		
3.	The company has got consent in writing from the State Board.  Whether the consent given to company has been cancelled by State Board before the expiry of the		

	period for which it is granted for non fulfilment of conditions subject to which the consent was granted.		
4.	The Company has complied with the following conditions as laid in the consent by the State Board namely; <ul style="list-style-type: none"> <li>(i) Installation and operation of the control equipment of such specification as the State Board may approve.</li> <li>(ii) Alteration or replacement of the existing control equipment if any, in accordance with the directions of the State Board;</li> <li>(iii) Keeping the control equipment referred above in good running condition;</li> <li>(iv) Erection or re-erection of Chimney, wherever necessary of such specifications as the State Board may approve in this behalf;</li> <li>(v) Such other conditions as the State Board may specify in this behalf.</li> </ul>		
5.	The Company has got any order from court restraining the company discharging or causing or permitting to be discharged the emission of any air pollutants.		
6.	The Company has received any direction from the State Board for supply of any information (including information regarding the types of atmosphere and the level of the emission of such air pollutants).		
7.	Whether any person authorized in this behalf by the State Board has inspected the premises of the company for the purpose of verifying the correctness of information supplied.		
8.	A State Board or any officer empowered by it in this behalf has taken any samples of air or emission from any chimney, flue or duct or any other outlet for the purpose of analysis.		
9.	The Company is discharging or causing or permitting to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board under section 17(1)(g)		

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# 11

## INDUSTRY SPECIFIC LAWS

*(Indicative List of Laws)*

Section 204 of the Companies Act, 2013 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, provides that every listed company and every prescribed company shall annex with its Board's Report, a Secretarial Audit Report, given by a Company Secretary in Practice, in Form MR- 3.

The Council at its 226th meeting held on November 21, 2014 after deliberating on the views that emerged from consultation meets and taking into consideration the views of members of Corporate Laws and Governance Committee, decided that the Scope of Secretarial Audit includes:

- Reporting on compliance of five laws as mentioned in form MR-3
  - Companies Act, 2013 and the rules made thereunder;
  - Securities Contracts (Regulation) Act, 1956 ('SCRA'), and the rules made thereunder;
  - Depositories Act, 1996, and the rules made thereunder;
  - Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
  - Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act') :-
    1. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
    2. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
    3. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
    4. The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
    5. The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
    6. The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
    7. The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
    8. The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998.

- Reporting on compliance of secretarial standards issued by the Institute of Company Secretaries of India;
- Reporting on Compliances with the Listing Agreement;
- Reporting on compliance of 'Other laws as may be applicable specifically to the company' which shall include all the laws which are applicable to specific industry for example for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry; likewise for a company in petroleum sector- all laws applicable to petroleum industry; similarly for companies in pharmaceutical sector, cement industry etc.;
- Examining and reporting whether the adequate systems and processes are in place to monitor and ensure compliance with general laws like labour laws, competition law, environmental laws;
- Examining and reporting specific observations / qualification, reservation or adverse remarks in respect of the Board Structures/system and processes relating to the Audit period;
- In case of financial laws like tax laws and Customs Act etc., Secretarial Auditor may rely on the Reports given by statutory auditors or other designated professionals.

**Other laws as may be specifically applicable to the company (point (vi) as per MR-3)\***

For the benefit of members, the Institute is developing a list of various laws specifically applicable to companies in different sectors. An indicative list of sector specific central laws in respect of some of the sectors is placed below for reference.

The proposed Secretarial Standard on Meetings of Board of Directors (SS-1) requires that the list of laws applicable to the company be placed as an item of agenda at the first meeting of the Board in the financial year.

**INDICATIVE SECTOR WISE LIST**

**1. PHARMACEUTICAL INDUSTRY**

- Pharmacy Act, 1948
- Drugs and Cosmetics Act, 1940
- Homoeopathy Central Council Act, 1973
- Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954
- Narcotic Drugs and Psychotropic Substances Act, 1985
- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- The Medicinal & Toilet Preparations ( Excise Duties) Act, 1955
- Petroleum Act 1934
- Poisons Act 1919
- Food Safety And Standards Act, 2006
- Insecticides Act 1968
- Biological Diversity Act, 2002
- The Indian Copyright Act, 1957

- The Patents Act, 1970
- The Trade Marks Act, 1999

## **2. COMPUTER PROGRAMMING, CONSULTANCY AND RELATED SERVICES**

- The Information Technology Act, 2000
- The Special Economic Zone Act, 2005
- Policy relating to Software Technology Parks of India and its regulations
- The Indian Copyright Act, 1957
- The Patents Act, 1970
- The Trade Marks Act, 1999

## **3. GAS INDUSTRY**

- The Petroleum Act, 1934
- Petroleum and Minerals Pipelines (Acquisition of Right of User Inland) Act, 1962
- Explosives Act, 1884
- The Oilfield ( Regulation & Development) Act , 1948
- Petroleum and Natural Gas Regulatory Board Act, 2006
- The Oil Industry( Development) Act 1974
- The Mines Act, 1952

## **4. OIL & PETROLEUM SECTOR**

- The Petroleum Act, 1934
- Petroleum and Minerals Pipelines (Acquisition of Right of User Inland) Act, 1962
- Explosives Act, 1884
- The Oilfield ( Regulation & Development) Act , 1948
- Petroleum and Natural Gas Regulatory Board Act, 2006
- The Oil Industry( Development) Act, 1974
- The Mines Act, 1952
- Mines and Minerals (Regulations and Development) Act, 1957
- The Territorial Waters, Continental Shelf, Exclusive Economic Zone And Other Maritime Zones Act, 1976
- Offshore Areas Minerals (Development and Regulation) Act, 2002

## **5. POWER**

- The Electricity Act, 2003
- National Tariff Policy
- Essential Commodities Act, 1955

- Explosives Act, 1884
- Mines Act, 1952 (wherever applicable)
- Mines and Mineral (Regulation and Development) Act, 1957 (wherever applicable)

#### **6. SUGAR INDUSTRY**

- Sugar Cess Act, 1982
- Levy Sugar Price Equalisation Fund Act, 1976
- Food Safety And Standards Act, 2006
- Essential Commodities Act, 1955
- Sugar Development Fund Act, 1982
- Export (Quality Control and Inspection) Act, 1963
- Agricultural and Processed Food Products Export Act, 1986

#### **7. TOBACCO INDUSTRY**

- Tobacco Board Act, 1975
- Tobacco Cess Act, 1975
- Beedi and Cigar Workers (Conditions of Employment) Act, 1966 as amended in 1993
- Beedi Workers Welfare Cess Act, 1976
- Beedi Workers Welfare Fund Act, 1976
- Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COPTA)
- The Cable Television Network (Regulation) Act, 1955

#### **8. INSURANCE**

- Insurance Act, 1938
- Insurance Regulatory and Development Authority Act, 1999
- General Insurance Business (Nationalisation) Act, 1972
- Industrial Disputes (Banking and Insurance Companies) Act, 1949
- Marine Insurance Act, 1963

#### **9. COMMERCIAL BANKS (OTHER THAN NATIONALISED BANKS AND STATE BANK OF INDIA)**

- Reserve Bank of India Act, 1934
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- The Bankers' Books Evidence Act, 1891
- Recovery of Debts due to Banks & Financial Institution Act, 1993
- Credit Information Companies (Regulation) Act, 2005

- Prevention of Money Laundering Act, 2002
- The Deposit Insurance and Credit Guarantee Corporation Act, 1961
- Industrial Disputes (Banking and Insurance Companies) Act, 1949
- Information Technology Act, 2000

#### **10. BEVERAGES (NON- ALCOHOLIC)**

- Food Safety and Standards Act, 2006
- The Insecticide Act, 1968
- Export (Quality Control and Inspection) Act, 1963
- Inflammable Substances Act, 1952
- Agricultural and Processed Food Products Export Cess Act, 1986
- Agricultural Produce ( Grading and Marking ) Act, 1937

#### **11. REAL ESTATE SECTOR**

- Housing Board Act, 1965
- Transfer of Property Act, 1882
- Building and Other Construction Workers' (Regulation of Employment and Conditions of Services) Act, 1996

#### **12. AUTOMOBILE**

- Motor Vehicles Act, 1988
- The Motor Transport Workers Act, 1961
- The Explosive Act, 1884
- The Petroleum Act, 1934
- The Environment (Protection) Act, 1986
- The Water( Prevention and Control of Pollution) Act, 1974
- The Air( Prevention and Control of Pollution) Act, 1981

#### **13. AVIATION SECTOR**

- Aircraft Act, 1934
- Airports Authority of India Act, 1994
- Carriage by Air Act, 1972
- Tokyo Convention Act, 1975
- Anti-Hijacking Act, 1982
- Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982
- Airports Economic Regulatory Authority of India Act, 2008

#### **14. HUMAN HEALTH SECTOR**

- Clinical Establishment (Registration and Regulation) Act, 2010
- Indian Medical Council Act, 1956
- Indian Medical Degrees Act, 1916
- Indian Nursing Council Act, 1947
- The Dentists Act, 1948
- Rehabilitation Council of India Act, 1992
- Drugs and Cosmetic Act, 1940
- The Drugs Control Act, 1950
- Pharmacy Act, 1948
- Narcotics and Psychotropic Substances Act, 1985
- Homoeopathy Central Council Act, 1973
- Insecticide Act, 1968
- Transplantation of Human Organs Act, 1994
- Drugs and Magic Remedies (Objectionable) Advertisements Act, 1954
- Birth and Death and Marriage Registration Act, 1886
- Mental Health Act, 1987
- Ear Drums and Ear Bones (Authority for Use For Therapeutic Purposes) Act, 1982
- Eyes (Authority for Use For Therapeutic Purposes) Act, 1982
- The Epidemic Disease Act 1897

#### **15. MINING OF METAL ORES**

- Mines Act, 1952
- Mines and Minerals (Development and Regulation) Act, 1957
- Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976
- Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976

#### **16. EDIBLE OILS**

- National Oil Seeds and Vegetable Oils Development Board Act, 1983
- Cotton Copra and Vegetable Oils Cess (Abolition) Act, 1987
- Seeds Act, 1966
- Protection of Plant Varieties and Farmers Right Act, 2001
- Food Safety And Standards Act, 2006

## 17. ROAD TRANSPORT

- National Highways Act, 1956
- The Multimodal Transportation of Goods Act, 1993
- Control of National Highways (Land and Traffic) Act, 2002
- Carriage by Road Act, 2007
- Road Transport Corporations Act, 1950
- Motor Vehicles Act, 1988

*Note :* The Institute with a view to facilitate the members to conduct Secretarial Audit has compiled list of specific Central Acts applicable to various sectors. The list is indicative only and not exhaustive.

It may so happen that some of the sector specific laws do not figure in this list. Members are advised to use their own professional judgement and resources in identifying other sector specific Laws/ Rules/ Regulations/ Guidelines/ Orders/ Amendments/ Standards/Policies, as well as State Laws, while conducting Secretarial Audit.

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# 12

## BOARD PROCESSES

### Introduction

Directors, collectively called Board of Directors, in fulfilling the fiduciary objectives need to ensure that the company adheres to transparent, ethical and responsible governance of the company. It is, therefore, important that the Board processes of the company are robust.

They can be broadly divided into two parts namely:-

1. **Part A – Board Structure**
2. **Part B – Board Systems and Procedures**

### PART A – BOARD STRUCTURE

The expression covers various attributes and dimensions of boards ranging from size and diversity to balancing of various interests and independence. The Board structure can further be divided as under:

#### BOARD STRUCTURE

##### A.1 Size and Composition of Board

S.No.	Contents	Remarks
<b>Size and Composition of Board</b>		
1	Check that the minimum number of directors in a private company is 2 and public company is 3	
2	Check that the maximum limit of number of directors is restricted to fifteen, In case the company has exceeded the maximum limit has it passed special resolution for the same and has filed form MGT-14 with ROC within 30 days from the passing of special resolution.	
3	In case the company is a listed public company check for optimum combination of executive and non-executive directors, whether the Board of Directors comprise of not less than fifty percent non-executive directors (NEDs) and atleast one woman director.	
4	In case the company falls under following category, check that the company has appointed at least one woman director- <ul style="list-style-type: none"> <li>(i) every listed company;</li> <li>(ii) every other public company having -               <ul style="list-style-type: none"> <li>(a) paid-up share capital of one hundred crore rupees or more; or</li> <li>(b) turnover of three hundred crore rupees or more.</li> </ul> </li> </ul>	

5	<p>In case the company is a listed public company check :</p> <p>Where the Chairman of the Board is a NED, at least one-third of the Board comprises of independent directors.</p> <p>Where the company does not have a regular non-executive Chairman, at least half of the Board comprises of independent directors.</p> <p>Where the regular non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions is at the Board level or at one level below the Board, at least one-half of the Board of the company consists of independent directors.</p>	
6	<p>In case the company falls under following category check if company has appointed at least two directors as independent directors:</p> <ul style="list-style-type: none"> <li>(i) the Public Companies having paid up share capital of ten crore rupees or more; or</li> <li>(ii) the Public Companies having turnover of one hundred crore rupees or more; or</li> <li>(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:</li> <li>(iv) in case a company covered under the relevant rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.</li> </ul>	
7	<p>Ensure that all the independent directors meet the qualifying criteria, for the purpose check the declaration given by every independent director to the board.</p>	
8	<p>Check the formal letter of appointment given to independent directors and the terms and conditions of appointment are available on company's website.</p> <p>As per Companies Act, 2013</p> <p>An independent director shall not be entitled to any stock option and may receive remuneration by way of fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.</p> <p>As per Clause 49 of the Listing Agreement:</p> <p>Check that all fees / compensation, if any paid to non-executive directors, including independent directors, has been fixed by the</p>	

	<p>Board of Directors and previous approval of shareholders in general meeting has been accorded. Ensure that the shareholders' resolution specifies the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year and in aggregate. The independent directors are not entitled to any stock exchange.</p> <p>Where the sitting fees payable to the non-executive directors exceeds the limit prescribed under the Companies Act, 2013 check that prior approval of shareholders in general meeting has been obtained.</p>	
9	<p>In case of a listed company check if small shareholders have demanded that their representative should be elected to the Board upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, at least 14 days before the meeting.</p> <p>If yes ensure that one person who himself is a small shareholder is elected as a director by small shareholders.</p>	
10	<p>Check the declaration of his independence where such director is treated as independent director that he satisfies the criteria of independent director.</p>	
11	<p>Check that such director representing small shareholders is not subjected to retirement by rotation and he is not holding such position in more than two companies. Check whether the second company in which he was appointed is not in conflict or competition with the business of first company.</p> <p>Check that the person is not appointed as such for a period exceeding three consecutive years.</p>	
12	<p>Check that at least one director of the company has stayed in India for a total period of not less than 182 days in previous calendar year. The first 'previous calendar year' for compliance with these provisions would be Calendar Year 2014. The period to be taken into account for compliance with these provisions will be the remaining period of calendar year 2014 (i.e. 1st April to 31st December), on a proportionate basis, the number of days for which the director(s) would need to be resident in India, during Calendar Year 2014, shall exceed 136 days.</p>	
<b>BOARD SYSTEMS AND PROCEDURE</b>		
13	<p>Check that the company held its first meeting in 30 days of incorporation and a minimum number of four meetings of its Board of Directors during the year in such a manner that there was gap of not more than one hundred and twenty days between two consecutive meetings of the Board.</p>	

14	<p>Check that the notice in writing was sent to every director at his address registered with the company either by hand delivery or by post or by electronic means at least seven days prior to the meeting.</p> <p>In case meeting of the Board was called by giving not less than seven days' notice ensure that at least one independent director, if any, was present at the meeting.</p> <p>In case of absence of independent directors from such a meeting of the Board, check that decisions taken at such a meeting were circulated to all the directors and are ratified by at least one independent director, if any.</p>	
15	<p>If the company provides audio-visual facility, check that the notice of the meeting informs that the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and also provide information on all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.</p>	
16	<p>Check that following matters were not dealt through video conferencing or other audio visual means in board meeting:</p> <ul style="list-style-type: none"> <li>(i) the approval of the annual financial statements;</li> <li>(ii) the approval of the Board's report;</li> <li>(iii) the approval of the prospectus;</li> <li>(iv) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under section 134(1); and</li> <li>(v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.</li> </ul>	
17	<p>Check that the quorum for a meeting of the Board of Directors of a company was satisfied i.e. one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means was also counted for the purpose of quorum.</p>	
18	<p>Check that the independent directors of the company held at least one meeting in a year, without the attendance of non-independent directors and members of management.</p>	
19	<p>Check that in separate meeting of independent directors they reviewed the performance of non-independent directors and the Board as a whole and reviewed the performance of the</p>	

	Chairperson of the company, taking into account the views of executive directors and non-executive directors and to assess, the quality, quantity and timeliness of flow of information between the company management and the Board members that is necessary for the Board to effectively and reasonably perform their duties.	
20	Check that every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year has in its Board's report made a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.	
21	Check that every director discloses his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP 1, at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made. Check whether form MGT-14 is filed within 30 days of passing of board resolution in respect of such disclosure.	
22	Ensure that interested director did not participate when such contract or arrangement was taken up for discussion and was not counted for the quorum for the same.	
23	Check that all material transactions with related parties have been disclosed quarterly along with the compliance report on corporate governance.	
24	Check that the company has formulated a policy on materiality of Related Party Transaction and also on dealing with Related Party Transactions and the same is disclosed on its website and also in the Annual Report.	
25	In case of listed company check that the Related Party Transactions had prior approval of the Audit Committee. In case the audit committee has granted omnibus approval for related party transactions proposed to be entered into by the company, for a period not exceeding one year then all the related party transactions were in accordance with the omnibus approval.	
26	All Related Party Transactions covered under rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014 have been approved by the shareholders through special resolution and the related parties abstained from voting on such resolutions. (This shall not apply to transactions between in case of wholly	

	owned subsidiary and holding company and between two government companies). Check whether the company has filed form MGT-14 with ROC within 30 days of passing special resolution. Also check whether the company has recorded related party transactions in the register maintained in MBP-4.	
27	Check the Board periodically ensures that the systems and processes in the company are adequately commensurate with its size and operations to monitor and ensure compliance with applicable laws, rules, regulations and guidelines and that such systems and processes are operating effectively.	
28	Check that the Board periodically reviews compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.	
29	<p>Check that the Board of the company satisfies itself that plans are in place for orderly succession for appointments to the Board and to senior management.</p> <p>The Nomination and Remuneration committee is responsible to identify 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.</p>	
30	Check that the minutes of board/ committee meetings are properly maintained in accordance with the Act.	
<b>BOARD COMMITTEES</b>		
31	Ensure that a director is not a member in more than ten committees or act as Chairman of more than five committees across all companies except private companies, foreign companies and section 8 companies, in which he is a director.	
32	<p>Check where the company falls under any of the following categories:</p> <ul style="list-style-type: none"> <li>(i) a listed company;</li> <li>(ii) all public companies with a paid up capital of ten crore rupees or more on the date of last audited Financial Statements;</li> <li>(iii) all public companies having turnover of one hundred crore rupees or more on the date of last audited Financial Statements;</li> <li>(iv) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits</li> </ul>	

	<p>exceeding fifty crore rupees or more on the date of last audited Financial Statements.</p> <p>If yes, check that the Board of directors have constituted an Audit Committee and a Nomination and Remuneration Committee of the Board.</p>	
33	<p>Check that the audit committee consists of a minimum of three directors with a majority of independent directors. In case of listed company Two-third of the total number of members of audit committee shall be independent directors.</p> <p>Ensure that the board's report discloses the composition of an audit committee.</p>	
34	<p>Check that the majority of members of Audit Committee including its Chairperson are persons with ability to read and understand, the financial statement.</p> <p>In case of listed company all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.</p>	
35	<p>In case of listed company, check whether the Chairman of the Audit Committee is an independent director and that the Chairman of the Audit Committee was present at Annual General Meeting to answer the queries of shareholder/s.</p>	
36	<p>Check that the Audit Committee of the company if any, in consultation with the Internal Auditor, has formulated the scope, functioning, periodicity and methodology for conducting the internal audit. Check whether the Audit Committee has authority to investigate into points covered under Section 177(4) of the Companies Act, 2013 and power to seek professional advice from external sources.</p>	
37	<p>Check where the company falls under any one of the following categories :</p> <ul style="list-style-type: none"> <li>(i) a listed company;</li> <li>(ii) a company which accepts deposits from the public;</li> <li>(iii) a company which has borrowed money from banks and public financial institutions in excess of fifty crore rupees.</li> </ul> <p>If yes, check that the company has constituted vigil mechanism for their directors and employees to report their genuine concerns or grievances.</p>	
38	<p>Check that the terms of reference (in addition to other items) of audit committee ensures overseeing the vigil mechanism of the company.</p>	

39	In case of listed companies, check whether the details relating to Related party transactions entered into by the company pursuant to each omnibus approval has been placed before the audit committee at least on quarterly basis. Check whether all the material individual transactions, not in the normal course of business and at, arm's length are placed before the Audit Committee with Management's justification. Check whether the management discussion and analysis statement is disclosed in the directors' report.	
40	In case of listed company check that the Audit Committee has met at least four times in a year and not more than four months have elapsed between two meetings.	
41	In case of listed company check that the quorum of audit committee was maintained in all meetings i.e. either two members. or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.	
42	Check that any recommendation of the audit committee which is not accepted by the Board is disclosed in the Board's report.	
43	Check that the Nomination and Remuneration Committee consists of at least three or more non-executive directors out of which not less than one-half are independent directors.	
44	Check whether the Chairman or a member of the nomination and remuneration committee was present at the Annual General Meeting, to answer the shareholders' queries.	
45	Check whether the board's report gives disclosure of the remuneration policy relating to the remuneration of the directors, key managerial personnel and other employees and the evaluation criteria of independent directors. Check whether the ratio of remuneration of each director to median employee's remuneration, percentage increase in remuneration of KMPs and median employees, in financial year, number of employees on role, relation between average increase in remuneration vis-a-vis performance, key parameters of variable components in remuneration, and such other important details are disclosed in the board's report. Check whether the remuneration to KMPs is as per the remuneration policy framed by the company.	
46	Check that where a company consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year has constituted a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.	

47	Check whether the Chairman or a member of the Stakeholders Relationship Committee was present at the Annual General Meeting, to answer the shareholders' queries.	
48	Check whether the company has taken D & O Insurance for managing director, independent director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary.	
49	Check that every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year has constituted a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director is an independent director.	
50	Check that the board's report discloses the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.	
51	Check that the Corporate Social Responsibility Policy for the Company was approved by the board of directors and the contents of such Policy are disclosed in its report and also place it on the company's website.	
52	Check that the composition of the committee is also disclosed in the Board's Report.	
53	Check that the company has disclosed reasons for not spending the amount for CSR in its Board's report, if so.	
54	Check that in case of listed company that it has constituted a Risk Management Committee. Ensure that the majority of committee members are board members and the chairman is also a board member, senior executives may also be members of this committee.	
55	Check that the company has laid down procedures to inform Board members about the risk assessment and minimization procedures.	
56	Check that the Board has framed, implemented and monitored the risk management plan for the company.	
57	Ensure that a statement is made w.r.t. risk management policy in Board's report.	
58	Check that the Code of Conduct for the Board of Directors and the senior management is disclosed on the website of the company.	

59	Check the annual report for the details of familiarization programmes for the Independent Directors shall be disclosed on the company's website and a web link thereto shall also be given in the Annual Report.	
60	Check that every company observes secretarial standards with respect to conduct of Board meetings. (SS-1)	

*Checked By*

*Reviewed By*

*Dated .....*

*Dated .....*

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# 13

## SPECIMEN OF QUALIFIED SECRETARIAL AUDIT REPORT

### SECRETARIAL AUDIT REPORT

#### FOR THE FINANCIAL YEAR ENDED ON 31ST March, 2015

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

To,  
The Members,  
XYZ Limited

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

Based on my/our verification of the Company's books, papers, minute books, forms and returns filed and other records maintained by the Company and also the information provided by the Company, its officers, agents and authorized representatives during the conduct of secretarial audit, I/We hereby report that in my/our opinion, the company has, during the audit period covering the financial year ended on 31st March, 2015 complied with the statutory provisions listed hereunder and also that the Company has proper Board-processes and compliance-mechanism in place to the extent, in the manner and subject to the reporting made hereinafter:

I/We have examined the books, papers, minute books, forms and returns filed and other records maintained by XYZ Limited for the financial year ended on 31st March, 2015 according to the provisions of:

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

- (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
  - (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
  - (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
  - (f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
  - (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
  - (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
- (vi) and other applicable laws like in case of a pharmaceutical Company, the Pharmacy Act, 1948; Drugs and Cosmetics Act, 1940; Homeopathy Central Council Act, 1973 etc.

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

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

During the period under review the Company has complied with the provisions of the Act, Rules, Regulations, Guidelines, Standards, etc. mentioned above except to the extent as mentioned below:

1. In respect of issue of further shares, company did not pass a special resolution before allotting shares to persons other than existing members. This is a non-compliance of section 62 of the Companies Act, 2013.
2. In respect of a acceptance of deposits, company is in the process of taking Insurance policy.
3. The Company has not filed charge created on its property for obtaining guarantees from its bankers. The Bankers themselves can also file charge and 300 days time is given for filing with late payment fees. If it falls under this category, then it is deemed compliance. Even after 300 days if a condonation of delay application is made, it would be deemed compliance of process until conditions is denied. Only when denied it will be reported as non-compliance.
4. The Company has got two factory premises where registration under the Factories Act is yet to be done. If in the system, application of registration surfaces, then there is adequate system in place.
5. ....
6. ....

I/we further report that

The Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors and Independent Directors. The changes in the composition of the Board of Directors that took place during the period under review were carried out in compliance with the provisions of the Act except that Form DIR 12 was filed after 30 days from the date of resignation of Mr. X as Director. Where this form is filed with late fees, this should be reported as compliance by reference of payment of additional fees.

Adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance except in one case where notice was not given to Mr. Y in respect of a meeting held on ..., and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.

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

I/we further report that there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines however the compliance reports were not submitted to the Board in time and a delay of about six month was observed in informing the non compliance in respect of Compliances under Payment of Bonus Act, Employees Provident Fund Act.

We further report that during the audit period the company has signed the technical collaboration agreement with UVW Limited but the precise impact of such collaboration can not be reasonably estimated for the time being. Company has received show cause notice from the collector for nonpayment of stamp duty in respect of transfer of immovable property. Company has filed its reply however there is a contingency that company may have to pay a sum of Rs. 50 lacs by way of penalty.

*Place: Signature:*

*Date : Name of Company Secretary in practice / Firm :*

ACS/FCS No.

C P No.:

This report is to be read with our letter of even date which is annexed as **Annexure A** and forms an integral part of this report.

To,  
The Members  
XYZ Limited

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Our report of even date is to be read along with this letter.

1. Maintenance of secretarial record is the responsibility of the management of the company. Our responsibility is to express an opinion on these secretarial records based on our audit.
2. We have followed the audit practices and processes as were appropriate to obtain reasonable assurance about the correctness of the contents of the Secretarial records. The verification was done on test basis to ensure that correct facts are reflected in secretarial records. We believe that the processes and practices, we followed provide a reasonable basis for our opinion.
3. We have not verified the correctness and appropriateness of financial records and Books of Accounts of the company.
4. Where ever required, we have obtained the Management representation about the compliance of laws, rules and regulations and happening of events etc.
5. The compliance of the provisions of Corporate and other applicable laws, rules, regulations, standards is the responsibility of management. Our examination was limited to the verification of procedures on test basis.
6. The Secretarial Audit report is neither an assurance as to the future viability of the company nor of the efficacy or effectiveness with which the management has conducted the affairs of the company.

Signature:

Date:

Place:

(Name)

Practising Company Secretary

Membership No. \_\_\_\_\_

Certificate of Practice No.

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